

WELCOME TO A WORLD
UNLIKE
ANY OTHER

VIRGINIA COMMONWEALTH UNIVERSITY
BOARD OF VISITORS
RESOURCE GUIDE
2025-26



VCU



VCU

THE MUSEUM
IS A SCHOOL;

THE ARTIST LEARNS
TO COMMUNICATE,

THE PUBLIC LEARNS
TO MAKE CONNECTIONS.

In a world of the common, we are the **UNCOMMON.**

We aren't here to conform. Instead, we are prepared to undo the status quo in higher education and health care in order to pursue a future built by us. There is nowhere like this, and no one like us.

Welcome to VCU. A world unlike any other.

UNPARALLELED student success

#1 among 4-year public universities in Virginia for student scholarships and grants, \$1 billion since 2019

73% of VCU students participate in at least one experiential learning activity

37% of first-year students are first-generation

UNCOMMON by design.

There are more than 3,500 colleges and universities in the U.S. So, what makes VCU different?

We're not built like other research universities — and that's the point. With over \$500M in sponsored funding, VCU ranks among the top 50 public research universities and is one of just 84 R1 institutions nationally recognized for meaningful community engagement. From health to the arts, this is where bold ideas take shape **and UNCOMMON minds** — move the world forward.

UNBEATABLE location

\$2.71 billion in new construction and acquisition by VCU and VCU Health between 2009 and 2024

\$9.5 billion total economic impact in VA

VA is home to **1,460+**
alumni-owned businesses



OUR THREE PRIORITIES

NATIONAL PROMINENCE

ENROLLMENT

THOUGHT LEADERSHIP



TOP 50
Public research
university



TOP 20%
Best global
universities



#1 Richmond voted
"Best Place to Live
in Virginia"



ONE OF 84 public R1
universities with the Carnegie
Classification's community
engagement designation

BRAND SPIRIT

We tackle difficult challenges
others can't or won't.

We're shattering the status quo by
redefining health and higher education.

VCU is where different works.

BRAND PERSONALITY

Authentic, Bold, Compassionate,
Confident, Driven, Welcoming.

**We refuse to be bound by
traditional thinking.**

SHARED VALUES

Impactful. Passionate.
Principled. Community-centric.

We place the needs of
students and patients first.

VCU is a place where I belong.



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About the Board of Visitors

The Virginia Commonwealth University Board of Visitors is composed of 16 voting members appointed by the Governor of the Commonwealth of Virginia, subject to confirmation by the General Assembly. Each member is eligible to serve two four-year terms, which may be served consecutively. In addition, each year the board selects an undergraduate student, a graduate student, a faculty member, and a staff member to serve as nonvoting advisory representatives on the Board of Visitors.

As public trustees the board has the responsibility and authority, subject to constitutional and statutory limitations, for the continuing operation, development of evolving policies, and financial oversight of VCU.

The board and the university are at all times subject to the control and legislative enactments of the General Assembly of the Commonwealth of Virginia. The board in executing their duties has adopted the Virginia Commonwealth University Board of Visitors Bylaws (pg. 26) to provide for the orderly, consistent, and efficient conduct of its business as the governing body of the university.

Meeting Requirements

Certain meeting requirements for the board are set forth in state law (Va. Code §23.1- 2304.). The board must meet at least once a year at the university and a quorum consists of a simple majority of the members of the full board. Unless otherwise required by statute, actions of the board are taken by a simple majority of those present and voting. The board may meet without a quorum present, however no official action may be taken at said meeting. Notice of such meeting shall be required if required by the Virginia Freedom of Information Act (FOIA). The officers of the board shall be the Rector, Vice-Rector and Secretary, and shall be appointed from the board membership. Either the Rector or Vice-Rector shall be a resident of the Commonwealth of Virginia.

The Nominating Committee shall make its recommendation for Rector at the first regular board meeting of the calendar year and the board shall at that time elect a Rector. The Nominating Committee shall make a recommendation to the Board for the Vice-Rector and Secretary at the annual meeting and the board shall at that time elect a Vice-Rector and Secretary. The board may decide in its discretion to postpone the election for the Vice-Rector and Secretary until after July 1, and if so postponed the election shall occur at the next scheduled board meeting.

Public Body

The VCU Board of Visitors is a “public body” within the definition contained in the Virginia Freedom of Information Act (Va. Code § 2.2-3700 et seq.) and all board meetings are open to the press and public. During most regular meetings, closed sessions are held that are not open to the press and public. The Virginia Freedom of Information Act (FOIA) specifies the topics that may be discussed in closed sessions. A motion to go into a closed session must be approved by the participating members, and a confirmation that only the closed session topics were discussed is voted on upon leaving the closed session. The board may not take any official action of any kind in closed session.

Board Schedule

The VCU Board of Visitors meets four times a year as well as a retreat in October. The Board of Visitors meetings are divided into two categories: regular and special.

Regular meetings

The board shall meet at least four times a year on dates and in places (within Richmond as far as it is practical) set by the Rector. The annual meeting will be the last regular meeting of the fiscal year.

The Virginia Commonwealth University administration presents the proposed budget annually to the Board of Visitors, including reviewing the upcoming fiscal year's budget, including all proposed/needed tuition and fee increases. The information is presented in an open session and in a manner designed to review and explain the upcoming budget and any changes to tuition and fees. No final decisions or action items are taken when this information is initially presented. No approval for an increase in undergraduate tuition or mandatory fees shall be brought to a vote without providing students and the public a projected range of the planned increase, an explanation of the need for the increase, and notice of the date and location of any vote on such increase at least 30 days prior to such vote pursuant to the Code of Virginia.

Per the VCU Health System Board of Directors Bylaws, the VCU Board of Visitors and VCU Health System Board of Directors shall meet jointly once a year.

Special meetings

Special meetings of the board may be called by the Rector, or in the absence or disability of the Rector, by the Vice-Rector, or by any three members. The requests shall be submitted to Chelsea Gray, Executive Director of Board and Executive Operations, who has the administrative responsibility to make arrangements for special meetings. The purpose, date, time, and place will be specified in the call for the special meeting. The board schedule is regularly updated and provided to the board and on the VCU Board of Visitors website (bov.vcu.edu).

BOV POINTS OF CONTACT



Chelsea Gray
Executive Director of Board
and Executive Operations
Office of the President
Phone: (804) 441-3882
Email: cgray8@vcu.edu



Erin McClinton
Board and Operations Assistant
Office of the President
Phone: (540) 449-3390
Email: emcclinton@vcu.edu

Board Meeting and Events Schedule 2025-26

September 2025 Meetings

Thursday, September 11, 2025

VCU BOV Committees

Friday, September 12, 2025

VCU BOV Meeting

October 2025 Event and Meeting

Thursday, October 23, 2025

BOV/BOD reception (evening)

Friday, October 24, 2025

VCU BOV Retreat

November 2025 Meetings

Wednesday, November 12, 2025

SCHEV Orientation with Governor
Youngkin (required for all members)

Thursday, November 13, 2025

SCHEV Orientation (required for all members)

Thursday, November 20, 2025

VCU BOV Committees (afternoon)

Friday, November 21, 2025

VCU BOV Committees & Board Meeting

December 2025 Events

Friday, December 12, 2025

VCU Commencement Reception (evening)

Saturday, December 13, 2025

VCU Fall Commencement (morning)

February 2026 Meetings

Thursday, February 26, 2026

VCU BOV Committees (afternoon)

Friday, February 27, 2026

VCU BOV Committees & Board Meeting

March 2026 Meetings

Tuesday, March 24, 2026

VCU BOV Enrollment and Budget
workshop and joint BOV/BOD meeting

April 2026 Meetings

Thursday, April 23, 2025

VCU BOV Committees

Friday, April 24, 2026

VCU BOV Meeting

May 2026 Events

Friday, May 8, 2026

VCU Commencement Reception (evening)

Saturday, May 9, 2026

VCU Commencement (morning)

June 2026 Meeting

Thursday, June 4, 2026

VCU BOV Meeting (afternoon)



Board of Visitors' Statement on Governance and Ethical Leadership

The Virginia Commonwealth University Board of Visitors ("the Board") is composed of 16 voting members ("the Visitors") appointed by the Governor of the Commonwealth of Virginia, subject to confirmation by the General Assembly. Each member serves a term of four years.

As public trustees the Board has the responsibility and authority, subject to constitutional and statutory limitations, for the continuing operation, development of evolving policies, and financial oversight of Virginia Commonwealth University ("the University").

The Board in executing their duties has adopted the Virginia Commonwealth University Board of Visitors Bylaws to provide for the orderly, consistent, and efficient conduct of its business as the governing body of Virginia Commonwealth University. A copy of the Bylaws can be found at <https://bov.vcu.edu/bylaws/>.

In representing and exemplifying the University's mission to advance knowledge and student success, the members of the Board are in the utmost position of trust. This position of trust is inherently accompanied by the highest standards in leadership, responsibility, accountability, and governing authority during service. Incumbent upon the Board members is the modeling and promotion of, and contribution to, an organizational culture of respect, honesty, excellence, integrity, trust, accountability and responsibility, stewardship and compliance with all applicable laws, regulations, and the University's policies during service to the public through serving the University.

At VCU, expectations are set high in all endeavors and success is obtained in conjunction with the Visitors' support and commitment to integrity. The ethical expectations set for the Visitors further illustrate commitments to one another, our university community and the citizens of Virginia, all of whom have entrusted the Visitors to act ethically in all dealings.

The expectations set forth herein strongly resemble those ethical standards and expectations incumbent on all VCU employees and serve as a reminder of the obligations of, and challenges in, holding such a position of trust.

Members of the Board of Visitors bring a varied breadth of experiences, both professionally and personally, and all share in the commitment of supporting an environment of uncompromising integrity and ethical conduct. These ethical expectations are the foundation for all decisions and actions during service to VCU.

As representatives the University all Board members' actions shall be guided by these principles and values:

Loyalty: The Board will understand and support the University's mission, vision, and values. The Board shall act in good faith and in the best interests of the University and the citizens of the Commonwealth at all times and in a nonpartisan and unbiased manner.

Approved - March 21, 2025

In addition to board meetings, Board members, to the best of their ability, shall participate regularly in events at the University to ensure they are an active part of the University community.

The Board members shall advocate for VCU but speak for the Board or VCU only when authorized to do so by the Rector or the Board..

In maintaining the duties of care, loyalty, obedience, and disclosure, all free from undue influences and thereby protecting VCU from such influences, requires the extension of goodwill to every member and affiliate of the University community

Responsibility and Accountability: All decisions and actions reflect upon the reputation of the University; therefore, the commitment to upholding these expectations through Visitors' actions sustains, even when confronted by the challenges of personal, professional, social, or economic pressures.

The Board shall be responsible and accountable for its decisions and actions.

Integrity and Respect: The Board will respect individuals, rights, and the dignity of others.

The Board shall make decisions and direct the administration as a board and not as individuals.

The Board shall refrain from requests of the president, faculty, or staff for special consideration or personal prerogative, including admissions, employment, and contracts for business.

The Board shall respect established channels to acquire information from or open communications with faculty, staff or students.

The Board shall maintain confidentiality, as guided by the Virginia Freedom of Information Act (FOIA).

Honesty: The Board shall act and communicate honestly and candidly.

Stewardship: The Board shall be good stewards of the resources entrusted to the University.

The Board shall prepare diligently, attend faithfully, and participate constructively in all Board meetings, committee meetings, and related activities.

Individual Board members shall speak openly during the board meetings, but after a vote is taken, will support a decision of the Board.

The Board will extend goodwill to one another, all members of the VCU community, and all educational bodies associated with the University.

Individual Board members shall understand the role of the Board of Visitors as a policymaking and oversight body, and avoid unnecessary involvement in the administration of university policy and daily operation of the University..

Compliance: The Board shall understand and comply with the codes, laws, regulations, policies, and procedures that govern our University activities.

The Board shall abide by the Commonwealth of Virginia's State and Local Government Conflict of Interests Act, avoiding both conflicts of interest as defined by law and the appearance of such conflicts, and shall report promptly to the Rector any potential conflicts. This includes the timely filing of the annual financial disclosure statement and any other required documents.

The Board shall adhere to all applicable state and federal laws and regulations and Board policies and bylaws, including the requirements of the Virginia Freedom of Information Act.

Individual Board members shall certify that they have read and understand this Statement on Governance and Ethical Leadership by signing an acknowledgement form annually.

Individual Board members have a duty to report their own potential or actual violations of the Code of Ethics or those of other Board members to the Rector immediately upon realization or discovery.

Individual Board members shall participate in all training required by law.

Consistent with provisions of the Board bylaws regarding removal of board members, potential or actual violations of the Board Statement on Governance and Ethical Leadership shall be reviewed in the following manner:

The Rector will consult with the Board member in question and attempt to resolve the potential or actual noncompliance. If that consultation fails to resolve the matter, then

The Rector shall convene the Executive Committee to meet with the board member in question and attempt to resolve the potential or actual noncompliance. If that consultation fails to resolve the matter, then

The Rector shall convene the full Board to determine corrective action, as appropriate. If the Board determines by majority vote of the membership to recommend to the governor that a member be removed, then the applicable provisions of the bylaws relating to removal of a Board member shall be invoked.

The Board strongly agrees, and has received confirmation from the Association of Governing Boards' governance specialist who presented at the FY25 Board Retreat and other best practices resources, that an ombudsman is not necessary to facilitate the process.

Definitions

During Service

For purposes of this policy only, this term reflects the membership tenure of a Board member defined as eligible for service for two consecutive terms of four years only (exclusive of the portion of any unexpired term or any term on the board of less than four years to which a Board member has been appointed).

Duty of Care

A requirement that a person act toward others and the public with watchfulness, attention, caution, and prudence that a reasonable person in the same circumstances would.

Duty of Loyalty

A term used to describe a fiduciaries' duty, which requires placing the organization's interests ahead of their own. Fiduciaries may breach their duty of loyalty when they divert assets, opportunities, or information for personal gain.

Duty of Obedience

Refers to the Board member's obligation to advance the mission of the University. It also includes an expectation that Board members will act in a manner that is consistent with the mission and goals of the institution. Failure of this duty can result in a loss of public confidence in the institution.

Duty of Disclosure

Board members have a fiduciary duty to communicate honestly and ensure that any disclosure of information is truthful, accurate, and complete.

Committees

The VCU Board of Visitors currently holds six standing committees. They are as follows:

- Academic and Health Affairs
- Audit, Integrity and Compliance
- Facilities, Real Estate and Administration
- Finance and University Resources
- Governance and Compensation
- Intercollegiate Athletics

Each standing committee may establish and appoint subcommittees as necessary, subject to board approval. Subcommittees are subject to the same procedural rules as the primary committee.

The Rector shall appoint a Nominating Committee which shall have as its purpose the nomination of candidates for Rector, Vice-Rector, and Secretary of the board for the succeeding year, and shall periodically review board leadership succession. Upon election of the Rector for the succeeding year, the Rector and Rector-Elect shall become members of the Nominating Committee.

The Executive Committee shall be comprised of the Rector, Vice-Rector, Secretary, the Chairs of the standing committees, and two members-at-large who shall be elected by the board at the first regular meeting of the year. The Rector shall serve as the Chair and the Vice-Rector shall serve as the Vice Chair. The Executive Committee shall be authorized to convene and exercise the full power and authority of the board between meetings of the board whenever circumstances require immediate action to address matters of an urgent nature, or as the board may otherwise direct. All board members shall be notified of meetings and provided the agenda and any documents distributed for such meetings. Any board member who wishes to do so may attend an Executive Committee meeting.

The Rector may, from time to time appoint ad hoc committees of the board, as the Rector deems necessary for the good conduct of board and university affairs. Each such committee shall have a chair and at a minimum two additional members, all of whom shall be appointed by the Rector. The duties of all ad hoc committees shall be specified and reported to the board by the Rector at the time of the appointment.



Board Members 2025-2026



Ellen Fitzsimmons, Esq., Rector*
Former Chief Legal Officer and Head
of Public Affairs, Truist Financial
Corporation
Term expires 06/30/2026
*Appointed by Governor Youngkin
in 2022*



Anthony Bedell
Senior Corporate and Government
Relations Director, Becker's Federal
Lobbying Practice
Term expires 06/30/2027
*Appointed by Governor Youngkin
in 2022 (unexpired term)
Reappointed by Governor Youngkin
in 2023*



Steven DeLuca, Vice-Rector*
Vice President, Head of State
and Local Government Affairs,
Capital One Financial
Term expires 06/30/2027
*Appointed by Governor Youngkin
in 2023*



Lara Tyler Chambers
Owner and Financial Manager,
Tyler Development Group LLC.
Term expires 06/30/2029
*Appointed by Governor Youngkin
in 2025*



Vernon Dale Jones, Ph.D., Secretary*
Former Chancellor and Chief Academic
Officer, Penn State Wilkes-Barre
Term expires 06/30/2026
*Appointed by Governor Youngkin
in 2022*



Rooz Dadabhoy
CEO, Data Concepts
Term expires 06/30/2027
*Appointed by Governor Youngkin
in 2023*



Neil Amin
CEO, Shamin Hotels
Term expires 06/30/2029
*Appointed by Governor Youngkin
in 2025*



Siobhan Dunnivant, M.D.
Physician, HCA Physicians
Term expires 06/30/2028
*Appointed by Governor Youngkin
in 2024*



Peter Farrell*
Managing Partner, Tuckahoe Holdings
Term expires 06/30/2026
*Appointed by Governor Northam
in 2019 (unexpired term)
Reappointed by Governor Youngkin
in 2022*



Clifton Peay, M.D.
Founding Medical Director,
American Eye Center
Term expires 06/30/2026
*Appointed by Governor Youngkin
in 2022*



Andrew Florance
Founder and CEO, CoStar Group
Term expires 06/30/2029
*Appointed by Governor Northam in 2021
Reappointed by Governor Youngkin
in 2025*



Randolph Reynolds, Jr.*
Founding Partner,
Reynolds Development Company
Term expires 06/30/2028
*Appointed by Governor Youngkin
in 2024*



Lori Jennings
Founder and Executive Recruiter,
Jennings ProSearch
Term expires 06/30/2029
*Appointed by Governor Youngkin
in 2025*



Clarence "C.J." Sailor, Jr.
Director of Faith Partnerships,
Stand Together
Term expires 06/30/2028
*Appointed by Governor Youngkin
in 2024*



Kenneth Lipstock, M.D.
Owner and Medical Director,
Lipstock LASIK and
Cataract Center
Term expires 06/30/2028
*Appointed by Governor Youngkin
in 2024*



Gurpreet "P2" Sandhu
CEO, Sandhu Group
Term expires 06/30/2027
*Appointed by Governor Youngkin
in 2023*

*Denotes that member also serves on VCU Health System Board of Directors

University Leadership

Michael Rao, Ph.D., President of VCU and chair of the VCU Health System Authority Board



Michael Rao, Ph.D., became president of Virginia Commonwealth University and chair of VCU Health System Authority in 2009. He is the first Asian-American to lead VCU and the fifth person to serve as president since the university's creation in 1968.

Rao leads a nationally premier, urban public research university with an academic health system whose flagship hospital, VCU Medical Center, is ranked among the top 100 hospitals in the nation. VCU educates more than 28,000 students from 138 countries in more than 230 degree and certificate programs. As the largest employer in the Richmond area and among the largest in the commonwealth, VCU has an economic impact on Virginia of \$9.5 billion. Additionally, VCUarts Qatar — located in Doha's Education City — is internationally recognized for excellence in art and design.

Under Rao's leadership, VCU is ranked among the top 50 public universities in the United States for sponsored research expenditures. U.S. News & World Report ranks more than 20 of VCU's graduate programs in the top 50 in the nation. Consistently recognized for excellence, VCUart's sculpture program is ranked No. 1 in the U.S. Likewise, five of VCU's health sciences schools and departments rank in the top 15 for National Institutes of Health research funding in their fields among public institutions for FY2024, and in FY2024 the university surpassed \$500 million in sponsored research funding for the first time. VCU is designated by the Carnegie Foundation as an "R1: Very High Research Spending and Doctorate Production" with "Community Engagement" status.

Guided by its current strategic plan, Quest 2028: Together We Transform, the university is focused on the student experience, strengthening educator and researcher compensation, increasing national prominence through

research and improving the patient experience.

In FY2023, the university raised a record-breaking \$271 million in support of VCU's people, innovations, environments and the Richmond community and beyond.

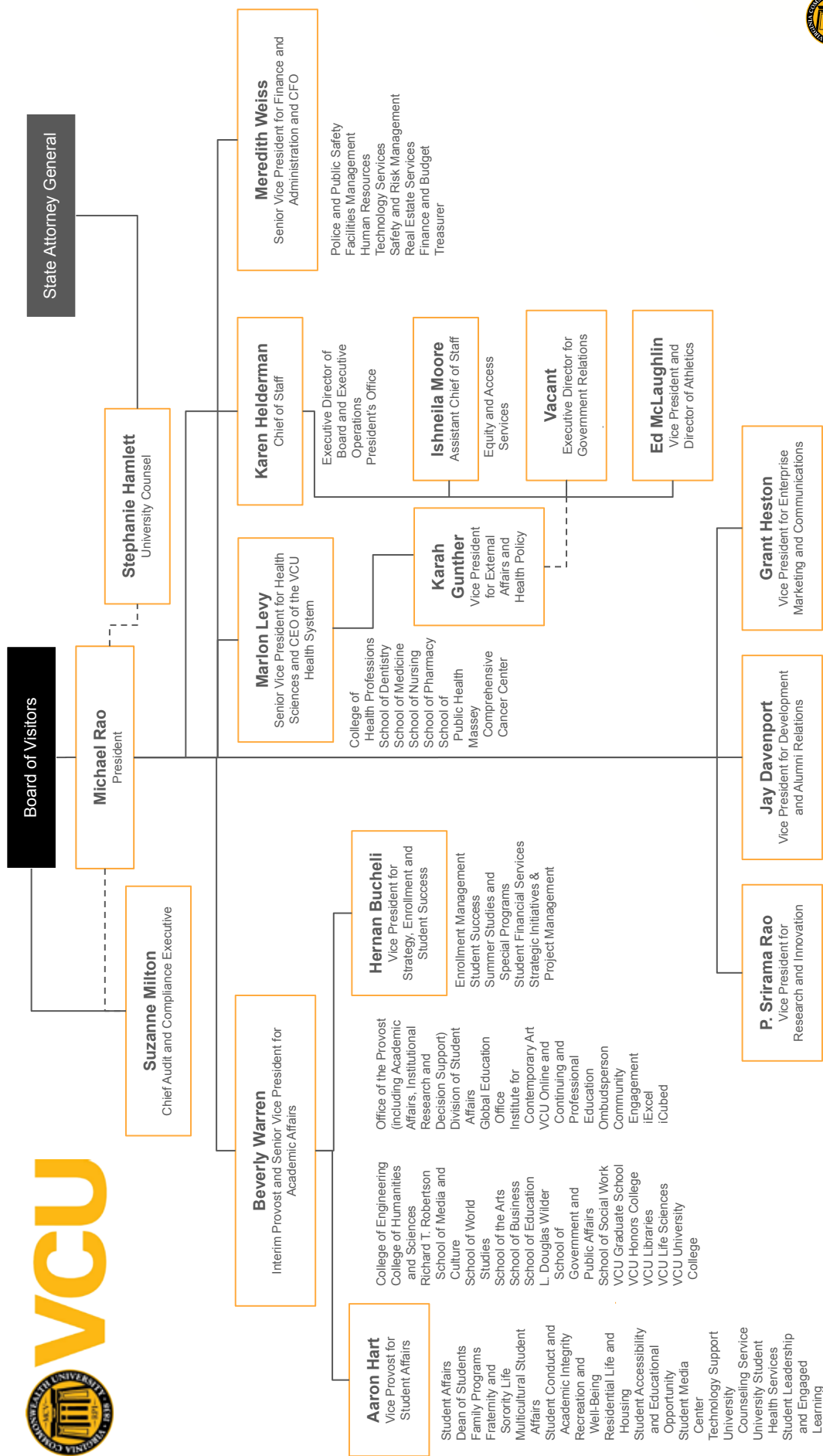
VCU is classified as a Tier III institution with the highest level of financial authority by the State Council of Higher Education for Virginia.

Rao has overseen one of the largest expansions of VCU's footprint through the construction or renovation of approximately 9 million square feet of living-learning environments, academic meeting spaces and state-of-the-art clinical and laboratory facilities. With guidance from the master facility plan, ONE VCU, the university's mission and physical environments will better align to support student success and patient experience while also focusing on safety, mobility and collaboration across programs. Recent projects include the VCU Engineering Research Building, the Children's Hospital of Richmond at VCU Children's Pavilion, VCU Health's Adult Outpatient Pavilion and the state-of-the-art STEM building with expanded lab space and support for innovative teaching methods.

Rao serves as chair of the Virginia Bio+Tech Partnership Authority and is a senior executive advisory committee member with the Northern Virginia Technology Council. He served as chair of the Council of Presidents and is a past chair for the American Council on Education.

Rao's career in higher education began in California in 1992, when he became president of Mission College. At the time, he was the youngest college president in the nation. He went on to serve as chancellor of Montana State University – Northern and president of Central Michigan University.

A tenured professor in the VCU College of Health Professions, Rao holds a bachelor's degree from the University of South Florida and a Ph.D. from the University of Florida. He and his wife, Monica — a watercolorist and graphic designer — have two sons.



President's Cabinet

**Beverly Warren Ph.D.**

Interim Provost and Senior Vice President for Academic Affairs

Dr. Warren is responsible for creating and implementing academic priorities for the university. Per board policy, she serves as the President's deputy and is empowered to act on behalf of the

President in all respects in the event of the absence, unavailability or disability of the President.

**Hernan Bucheli, Ed.D.**

Vice President for Strategic Enrollment Management, and Student Success

Dr. Bucheli is responsible for fostering the university's commitment to student access and success by actively leading approaches that enrich college access, affordability, and student success.

He also leads strategic priorities for the President and Provost.

**Marlon Levy, M.D.**

Senior Vice President for Health Sciences and CEO of VCU Health System

Dr. Levy leads the VCU health sciences schools and college, and the VCU Health System, which comprises VCU Medical Center; Children's Hospital of Richmond at VCU; VCU Health

Community Memorial Hospital, VCU Health Tappahannock Hospital; and MCV Physicians practice plan.

Vacant

Executive Director for Government Relations

The Executive Director of Government Relations is the strategic lead and primary liaison between the university, health system, and government officials, advocating for policies, public funding and legislation that support the institution's missions in education, research, healthcare, and economic development. The Executive Director for Government Relations serves to advance the strategic interests of VCU and VCU Health across local, state and federal levels of government.

**Meredith Weiss, Ph.D.**

Senior Vice President for Finance and Administration and CFO

Dr. Weiss is the CFO and senior administrative and finance officer for the university. As CFO, she oversees VCU's operating and capital budgets, treasury services, cash and debt

management, financial records, controls and reporting, procurement, payroll services, and grants and contracts reporting. In addition, Dr. Weiss oversees public safety, facilities management, technology services, human resources, safety and risk management, capital assets and real estate, parking and transportation, sustainability, and VCU's incident coordination team.

**Jay Davenport**

Vice President for Development and Alumni Relations for VCU and VCU Health System

Mr. Davenport leads both university and VCU Health fundraising and alumni initiatives through individual and grant solicitations, alumni engagement, development and alumni communication and marketing, donor stewardship, community philanthropy, and universitywide development staff supervision.

**Karen Helderman**

Chief of Staff

Ms. Helderman oversees the Office of the President and supports the President and executive leaders on a wide range of university and health system strategic issues. She serves as a liaison to internal and external constituencies to help drive institutional priorities and projects.

**Karah Gunther, J.D.**

Vice President for External Affairs and Health Policy for VCU and VCU Health System

Ms. Gunther analyzes and shapes state and federal policy relating to health care delivery, education, and research to ensure alignment with VCU's and VCU Health System's mission and strategic priorities. She also represents the health system and health sciences schools within external national and state professional associations and serves as the health system's primary representative to the business community.



Stephanie Hamlett, J.D.
University Counsel

Ms. Hamlett provides advice and counsel on legal and regulatory matters to the Board, the President, and the university community. She also serves as Senior Assistant Attorney General. Her legal team actively engages in the preventative practice of law through thorough and accurate advice to appropriate university clients; the development of legal and educational resources for the university community; and the defense of the university in all state, federal and administrative settings.



Aaron Hart, Ed.D.
Vice President for Student Affairs

Dr. Hart leads one of the university's largest divisions, composed of departments promoting the intellectual, cultural, personal, social, moral, financial, physical and psychological development of VCU students. The division provides administrative support for key policies of the university, including the VCU Honor System and the University Rules and Procedures.



Suzanne Milton
Chief Audit and Compliance Executive

Ms. Milton and her team work in partnership with university and VCU Health management to anticipate and manage risks, ensure the integrity of internal controls, ensure strong stewardship and management accountability, and promote a culture of compliance.



Grant J. Heston
Vice President for Enterprise Marketing and Communications for VCU and VCU Health System

Mr. Heston is the chief communications officer, overseeing marketing, branding, communications, events, social media, and special projects across the One VCU enterprise.



Ishneila (Squig) Moore, J.D.
Assistant Chief of Staff

Ms. Moore supports the President, Chief of Staff and executive leaders on a wide range of university and health system initiatives. She serves as a representative of the Office of the President, supports cabinet processes and initiatives and provides oversight of office operations.



Ed McLaughlin
Vice President and Director of Athletics

Mr. McLaughlin leads VCU Athletics and its approach to the student-athlete experience, guided by eight core values: drive to excel, commitment to community, integrity, loyalty, positivity, equity and diversity, collaboration, innovation, and student-athlete focus. VCU Athletics develops student-athletes, has achieved unprecedented academic success, and has won championships at a historic rate.



Srirama Rao, Ph.D.
Vice President for Research and Innovation

Dr. Rao leads the overall strategy, compliance, growth and expansion of the university's research enterprise. He heads the divisions of Clinical Research, Sponsored Programs, Research Compliance, Research Development, Research Integrity and Ethics, Communications and Outreach, Finance and Operations, Information Systems, and Technology, Commercialization and Economic Development.

VCU AND VCU HEALTH SYSTEM OVERVIEW

Virginia Commonwealth University is one of the nation's leading urban public research universities. It is a top three research university in the Commonwealth and one of six universities in the state designated as a tier 3 institution with the highest level of financial and administrative operational authority. It is one of two institutions in the Commonwealth with an academic health system.

VCU enrolled 28,831 students in 2024-25.

**21,563 undergraduate students
1,500+ online students**

VCU graduates several thousand undergraduates and graduate students each year.

Approximately 7,287 degrees and certificates were conferred in the 2023-24 academic year.

More than 229,000 living alums;
66 percent live in Virginia..

VCU offers more than 200+ degree and certificate programs.

VCU comprises 12 schools and 3 colleges

It includes a comprehensive health sciences campus, including the new School of Public Health and Virginia's only school of dentistry.

VCU Online offers 30 online program options in a range of fields:
10 bachelor's degrees, 17 master's degrees and three doctorates.

VCU is one of the nation's premier urban public research universities

U.S. News & World Report ranks VCU in the top 20% in the world among Best Global Universities.

VCU graduate programs and first-professional programs are consistently ranked among the top 50 nationally by U.S. News & World Report.

One of 84 public R1 universities with the Carnegie Classification's prestigious community engagement designation.

Research is a vital companion to the educational experience and to pursuing transformative innovation.

VCU has been ranked in the top 50 for research expenditures by public universities for three consecutive years. The increased research expenditures marks a near 100% growth over the past six years.

#1 university in Virginia for both startups formed and gross licensing revenue.

\$506 million in sponsored research funding. Focus areas include:

Drug discovery and manufacturing

VCU Massey Comprehensive Cancer Center

Stravitz-Sanyal Institute for Liver Disease and Metabolic Health

Richmond Teacher Residency Program

Mental health and addiction

AI, robotics, machine learning and virtual reality

Public health

Humanities, the arts and sciences

Diverse research areas tackle critical societal challenges. Key initiatives include:

Optimizing health

Enriching the human experience

Supporting sustainable energy and environments

Advancing societal wellbeing

Educating Virginia's workforce: driving prosperity and economic development

VCU's most recent economic and social impact report (2022) shows that VCU generates enormous economic impact for Virginia.

\$9.5 billion total economic impact on Virginia; generating 58,000 jobs

\$6.3 billion total economic impact on Richmond region; generating 44,000 jobs

\$3.9 billion total economic impact on the city of Richmond; generating 33,000 jobs

VCU and VCU Health have built and acquired more than 6.64M square feet of infrastructure between 2009 and 2024.

VCU's downtown campuses cover nearly 170 acres.

Branch campuses and satellite locations include:

VCUarts Qatar

VCU Rice Rivers Center

Southwest Virginia Higher Education Center

VCU Health System locations across the state

VCU is Richmond's largest employer with more than 24,000 employees at VCU and VCU Health System

More than 12,154 full- and part-time university employees, including 2,441 T&R faculty

About 14,000 full- and part-time VCU Health employees

VCU Health System employs more than 14,000 team members

1,000+ physicians

600 advanced practice professionals

VCU Health System by the numbers

Hospitals include VCU Medical Center, VCU Health Community Memorial Hospital and VCU Health Tappahannock Hospital

1,027 total licensed beds

200+ clinical specialties

19 clinical departments

1.3+ million outpatient clinic visits/year*

48,000+ inpatient discharges/year*

158,000+ emergency department visits/year*

As an academic health system, VCU Health has a tripartite mission of clinical care, education and research. In FY 2025, there were:

1,087 patients enrolled in clinical trials

1,220 patients in research studies

More than 4,300 health sciences students and 800+ residents (fall 2024 enrollment)

30% College of Health Professions

24% School of Medicine

22% School of Nursing

12% School of Dentistry

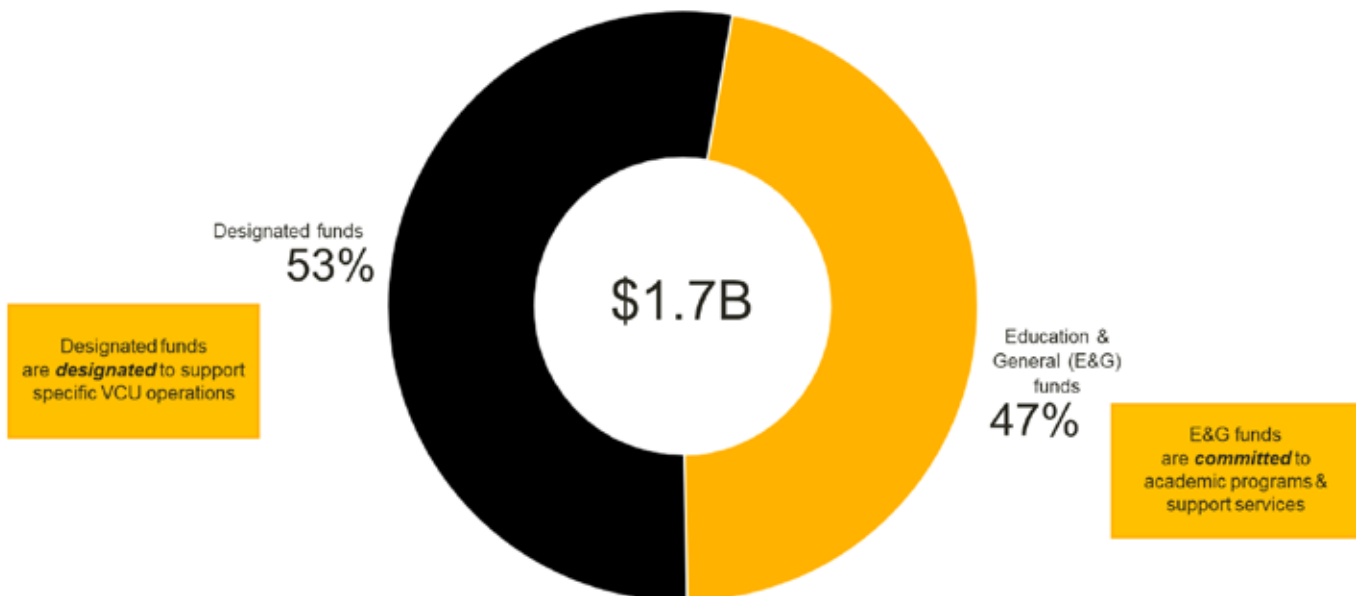
9%% School of Pharmacy

3%% School of Public Health

* Preliminary, non-audited FY25 data as of 8/4/2025

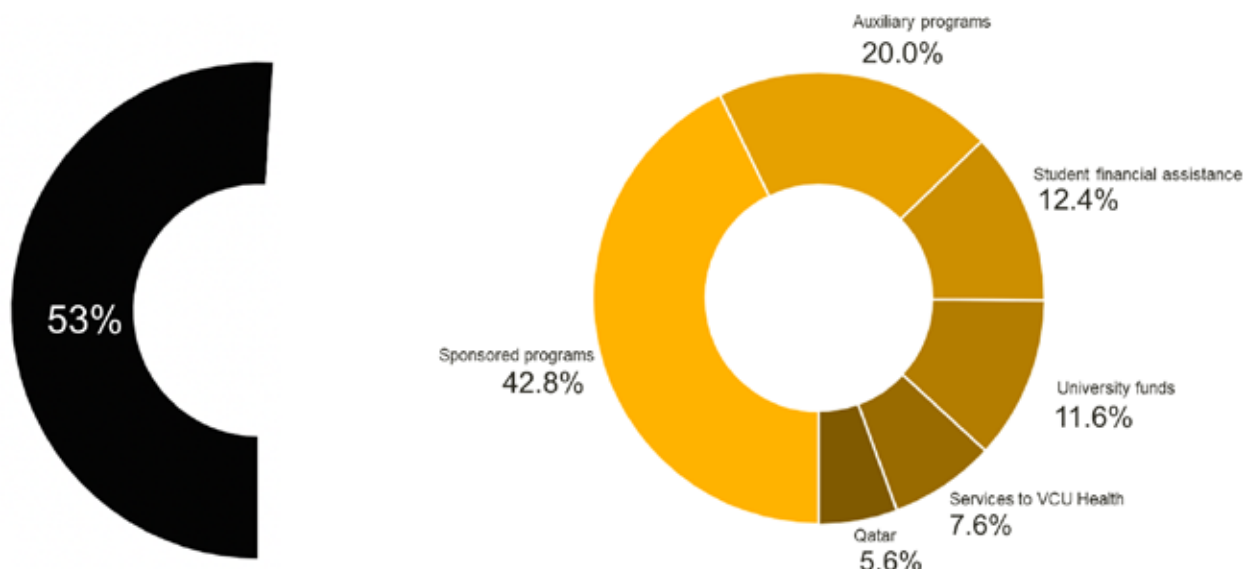
BUDGET BY SOURCE AND PROGRAM

VCU FY2026 all funds operating budget



Designated funds - 53%

Designated funds are **designated** to support specific VCU operations





The 2026-2032 Six-Year Capital Plan is among the most transformative capital plans in VCU's history and actualizes projects identified in the ONE VCU Master Plan, designed to align university and health system physical spaces with VCU's mission and strategic goals. These projects will facilitate innovative transdisciplinary and interdisciplinary achievements, allow us to grow our life-enhancing research, provide innovative teaching and learning spaces to prepare students for a new economy, increase enrollment and persistence, enhance the patient experience, support community partnerships, and bring us together as one VCU to serve our students and patients as never before. Projects in the plan are prioritized by need, and, due to the density of VCU's urban campus, some projects in earlier phases must be complete or underway before projects in later phases can begin. VCU's Board of Visitors approves a Six-Year Capital Plan every two years.

Research and innovation

There is a critical need for research space on VCU's campuses. As a R1 institution with more than \$506M in combined awards for sponsored programs, our research is growing fast among Virginia universities. Sanger Hall, our largest facility where research takes place, is well beyond its useful life, requires frequent emergency repairs, and offers no room for growth. Without modern research space, we run the risk of shutting down labs as well as losing talent and research funding. The Massey Shared Laboratory renovation will expand needed vivarium space and add 1,500 square feet of core labs.

Should VCU receive funding support from the state for the purchase of the Altria Center for Research and Technology, renovations in the second biennium of the capital plan would allow VCU to accelerate the discovery of life saving treatments and trials as well as transformative drug development and manufacturing. Located at 601 East Jackson Street in Richmond, adjacent to VCU's university medical center campus, this facility (a 450,000 square foot, state-of-the-art research facility built in 2007 that includes a 25,000 square foot vivarium) will meet multiple urgent needs including required space for VCU's Massey Comprehensive Cancer Center to maintain its comprehensive status, health sciences research, and academic and classroom space for VCU Schools of Pharmacy and Public Health.

VCU now ranks among the top 50 public research universities in the United States according to The National Science Foundation's Higher Education Research and Development survey (2021), and is ranked in the top 20% of universities worldwide by U.S. News and World Report. These rankings distinguish VCU as a vibrant public research university where researchers, educators, practitioners and entrepreneurs innovate together to improve lives and address societal challenges such as life-saving and life-altering improvements in human health, healthcare, the environment, education and more.

A center for contemporary dental education and care

VCU is home to the Commonwealth's only dental school and is the only facility in the state offering complete multidisciplinary care. The current School of Dentistry buildings are beyond their useful life, do not meet educational or patient care needs, and have significant accessibility issues and deferred maintenance estimated in excess of \$75 million. When the school turns away emergency care patients due to lack of adequate space, it leads to expensive and preventable emergency room visits and loss of student educational opportunities. The new VCU School of Dentistry will provide state-of-the-art education, equipment and technology serving more than 500 students as well as maximizing care for more

than 100,000 patients visits annually from across the Commonwealth, including underserved populations. It brings together general and specialty clinics, multiple cutting-edge academic laboratories, and associated contemporary support spaces — aligning with modern practices in dental education, enhancing patient care, advancing the academic (non-sponsored) research mission, improving faculty and student recruitment, and allowing for increased enrollment.

The new VCU School of Dentistry will be five stories tall with a partial basement and mechanical penthouse, at nearly 314,000 gross square feet. Shared spaces include classroom space, simulation and practice laboratories with manikin stations, academic laboratories, general and specialty practice clinics with operatories, and support spaces. A cafe/coffee shop on the main floor will be open to the university community; five classroom spaces will also be available to the university community for meetings and events.

Classrooms, labs and common spaces

With on-campus space at a premium, new classroom, lab and common spaces are mission-critical for VCU. The Transformative Learning Space and Laboratory Building will provide modern interdisciplinary classrooms and class laboratory spaces, including innovative “hyflex” capabilities that allow faculty to seamlessly address both in-person and remote students in new and engaging ways. Once constructed, classes and labs taking place in VCU’s Temple Building and Oliver Hall will relocate to the new site, making it possible to demolish, renovate and repurpose older campus buildings and spaces and make way for campus green space.

Student housing

The new West Grace Street Housing Project along Grace Street will offer much-needed residential housing as well as active ground-floor dining and a mail center that will further build upon activity along the campus “main street.” The new facility will replace the 518 beds in Johnson Hall and provide additional beds to meet increased demand. Students who live in campus-managed housing have higher retention and graduation rates and grades than students who do not. Even one year in campus-managed housing has positive impacts on retention and graduation. Coupled with iconic green spaces and front doors, housing and retail will strengthen the feeling of VCU as a welcoming and safe home for students.

Student commons and iconic green

A top recruitment driver and often a prospective student’s first impression, a new Student Commons will serve as the epicenter of student life, wellness, community engagement and learning outside of the classroom. The new facility will replace the current Student Commons, which is undersized and beyond its useful life. Our ONE VCU Master Plan process also reaffirmed that student retention and satisfaction are interconnected with green space and includes an iconic green that will provide much-desired open space for passive recreation and serve as the nexus of programmatic synergies.

Athletics

For VCU’s NCAA Division I teams who bring home A-10 conference titles year after year, an off-campus VCU Athletic Village will offer new sports fields and facilities, including outdoor track facilities and practice fields, a tennis center, soccer stadium, and an indoor field house. This plan returns on-campus real estate to serve academic and student needs, reduces travel and increases practice times for teams, and offers new opportunities for community impact through youth programming. During the ONE VCU Master Plan process, VCU Athletics conducted a planning study and determined that a new site, off the main-campus footprint, would solve several existing concerns — the need for more, consolidated space and the need for space upgrades. VCU Athletics currently falls below its peer average for sport and recreation space, with approximately a quarter of existing facilities in need of major renovation.

Front doors and streetscapes

Front doors play an important role for an urban campus. For VCU, they serve as identifiable campus markers and provide a clear sense of arrival to campus without separating us from our wonderful city. Front Doors include VCU letter signage as well as landscape features and intersection improvements that slow vehicular traffic and alert pedestrians. VCU also continues to work in partnership with the City of Richmond to improve pedestrian safety.



2026-2028 Biennium

Costs are estimated and will be revised through the design process

Project	State general fund	University/private	Debt	P3	Total
State projects					
VCU School of Dentistry	\$419,811,969				\$419,811,969
CoStar Center for Arts & Innovation Academic Building Equipment	\$20,342,639				\$20,342,639
Hyflex Interdisciplinary Innovation Classroom & Lab Building	\$201,205,837				\$201,205,837
University projects					
West Grace Street Housing Project (including Honors housing)		TBD	TBD		TBD
Massey Building Shared Lab Renovation		\$33,900,000			\$ 33,900,000
VCU Catering and Event Space		\$8,500,000			\$8,500,000

2028-2030 Biennium

Costs are estimated and will be revised through the design process

Project	State general fund	University/private	Debt	P3	Total
State projects					
Academic & Research Building Renovation	\$38,400,000	TBD	TBD		\$50,000,000
Johnson Hall Renovation/Repurposing	TBD				TBD
University projects					
Athletic Village - Soccer Stadium		TBD			TBD
Athletic Village - Tennis Courts		TBD			TBD

2030-2032 Biennium

Costs are estimated and will be revised through the design process

Project	State general fund	University/private	Debt	P3	Total
State projects					
Interdisciplinary Health Sciences Academic Building	\$325,000,000				\$325,000,000
Oliver Hall Renovation	\$100,311,410				\$100,311,410
University projects					
Athletic Village - Indoor Field House		TBD	TBD		TBD
Student Commons & Iconic Green		TBD	TBD		TBD
Student Housing Project		TBD	TBD		TBD

Appendices



Board of Visitors Bylaws

ARTICLE I LEGAL STATUS

SECTION 1. NAME

The Board of Visitors of Virginia Commonwealth University is a corporation under the name and style of “Virginia Commonwealth University”. The institution shall be known as Virginia Commonwealth University (“VCU”, or “the University”).

SECTION 2. PRINCIPAL OFFICE OF THE BOARD.

The principal office of the Board shall be located, and all meetings held, as far as practical, in the City of Richmond.

ARTICLE II BOARD OF VISITORS

SECTION 1. GOVERNING BODY.

The University shall be governed by the Board of Visitors (“Board”) and shall at all times be under the control of the General Assembly of the Commonwealth of Virginia.

SECTION 2. PURPOSE OF THE BOARD.

As set forth by the General Assembly, the Board is formed for the purpose of establishing and maintaining a university consisting of colleges, schools, and divisions offering undergraduate and graduate programs in the liberal arts and sciences and courses of study for the professions and such other courses of study, as may be appropriate, and in connection with the purpose, the board may maintain and conduct hospitals, infirmaries, dispensaries, laboratories, research centers, power plants, and such other facilities as it deems proper.

SECTION 3. COMPOSITION, APPOINTMENT, MEMBER TERMS, REMOVAL AND RESIGNATION OF MEMBERS.

- A. **Composition and Appointment.** The Board shall consist of 16 members appointed by the Governor of the Commonwealth of Virginia, subject to confirmation by the General Assembly, and shall serve until their successors have been appointed and taken their oath.

- B. **Member Term Limits.** Members shall be eligible to serve for two four-year terms, which may be served consecutively. However, a member appointed by the Governor to serve an unexpired term is eligible to serve two additional four-year terms.
- C. **Removal of Members.** If any member of the Board fails to attend (i) the meetings of the Board for one year without sufficient cause, as determined by a majority vote of the Board, or (ii) the educational programs for governing boards presented by the State Council of Higher Education for Virginia, as required by the Code of Virginia, in the member's first two years of membership without sufficient cause, as determined by a majority vote of the Board, the remaining members of the Board shall record such failure in the minutes at the Board's next meeting and notify the Governor, and the office of such member shall be vacated.

Additionally, the Governor has the authority to remove from office for malfeasance, misfeasance, incompetence, or gross neglect of duty any member of the Board and fill the vacancy resulting from the removal. Each appointment to fill a vacancy shall be subject to confirmation by the General Assembly.

- D. **Member Resignation.** Any Board member may resign at any time by providing notice of the date of resignation to the Governor, with a copy of said notice being provided to the Rector and a copy to the Assistant Secretary of the Board, so that the Board can take measures to accommodate said resignation. Such resignation shall take effect at the time specified in such notice and, unless otherwise specified therein, the acceptance of the resignation shall not be necessary for it to take effect.

SECTION 4. TRANSPARENCY.

The Board shall have the following responsibilities as set forth in the Code of Virginia related to transparency and open government:

1. Comply in all respects with the Commonwealth of Virginia's Freedom of Information Act ("FOIA").
2. Comply with the additional open meeting requirements for institutions of higher education, including but not limited to:
 - a. Adopt and post conspicuously on the VCU website these Bylaws;
 - b. Describe on the VCU website the Board's obligations under FOIA;
 - c. Conduct all discussions and actions on any topic not specifically exempted by FOIA in open meeting;
 - d. Give public notice of all meetings in accordance with FOIA; and
 - e. Approve in open meeting any action taken in closed session as required by FOIA.
3. Notify and invite the Attorney General's appointee or representative (the legal counsel of the institution) to all meetings of the Board, Executive Committee, and other Board committees.

4. Provide to the General Assembly and the Governor an annual executive summary of its interim activity and work no later than the first day of each regular session of the General Assembly. This report shall be submitted in accordance with procedures stipulated by law.

SECTION 5. MEETINGS.

- A. **Regular Meetings.** The Board shall meet at least four times a year on dates and in places (within Richmond as far as it is practical) set by the Rector. The annual meeting will be the last regular meeting of the fiscal year.
- B. **Special Meetings.** Special meetings of the Board may be called by the Rector, or in the absence or disability of the Rector, by the Vice-Rector, or by any three members. The requests shall be submitted to the Assistant Secretary to the Board, who has the ministerial responsibility for making arrangements for the special meeting. The purpose, date, time, and place will be specified in the call for the special meeting.
- C. **Notice.** At least three days' notice in writing (which may be by email) shall be provided and shall include the purpose, date, time, and place except that notice of an emergency meeting shall be reasonable under the circumstances and notice to the public shall be given contemporaneously with notice provided to members.
- D. **Quorum and Votes.**
 1. **Board of Visitors Meeting.** A simple majority of the members of the full Board constitutes a quorum. Unless otherwise required by statute, actions of the Board are taken by a simple majority of those present and voting. The Board may meet without a quorum present, however no official action may be taken at said meeting. Notice of such meeting shall be required if required by the Virginia Freedom of Information Act (FOIA).
 2. **Standing Committee Meetings.** For meetings of a Standing Committee a quorum shall be three (3) members of the Standing Committee. The Rector and/or Vice-Rector shall be counted as a member in determining the quorum for a meeting of one of the Standing Committees. A Standing Committee may meet without a quorum present, however no official action may be taken at said meeting. Notice of such meeting shall be required if required by the Virginia Freedom of Information Act (FOIA).
- E. **Order of Business.** The order of business at meetings shall be determined by the Rector.
- F. **Electronic Meetings.** The Board may adopt a policy on electronic meetings or participation in an electronic meeting as permitted by FOIA.

SECTION 6. OFFICERS OF THE BOARD.

- A. **Officers.** The officers of the Board shall be the Rector, Vice-Rector and Secretary, and shall be appointed from the Board membership. Either the Rector or Vice-Rector **shall** be a resident of the Commonwealth of Virginia.

B. **Election of Officers.** The Nominating Committee shall make its recommendation for Rector at the first regular Board meeting of the calendar year and the Board shall at that time elect a Rector. The Nominating Committee shall make a recommendation to the Board for the Vice-Rector and Secretary at the annual meeting and the Board shall at that time elect a Vice-Rector and Secretary. The Board may decide in its discretion to postpone the election for the Vice-Rector and Secretary until after July 1, and if so postponed the election shall occur at the next scheduled Board meeting.

C. **Rector.**

1. **Election and Term.** The Board shall elect a Rector-Elect at the first meeting of the calendar year; the Rector-Elect will take the office of Rector on July 1 for a one-year term. The Rector may be re-elected for one additional term. However, there shall be no limitation on the number of non-consecutive terms an individual may serve as Rector.
2. **Powers and Duties.** The Rector shall have the following duties and responsibilities:
 - a. preside at all Board meetings;
 - b. in consultation with the Vice-Rector appoint the members of each committee (both standing and ad hoc), including the Chair and Vice Chair;
 - c. act as spokesperson or representative of the Board; and
 - d. perform such other duties as are generally expected of the presiding officer or that are imposed by statute, these Bylaws, or action of the Board.

The Rector shall be a member, ex officio, with full voting rights, of all committees of the Board and shall be counted as a member in determining the quorum.

The Rector and the President shall work closely to develop the agenda for Board meetings and to submit reports and other communications to the Board. The Rector facilitates communication between the Board and the Administration. The Rector is normally anticipated to be one of the members of the Board to serve on the Board of Directors of the Virginia Commonwealth University Health System Authority.

D. **Vice-Rector.**

1. **Election and Term.** The Board, at its Annual meeting, or such other time as the Rector and Rector-Elect shall determine but in no event later than the first regular meeting of the fiscal year, elects a Vice-Rector who shall serve for a one-year term commencing on July 1, or on such date as a successor has been elected, whichever is later. The Vice-Rector may be re-elected for one additional term. However, there shall be no limitation on the number of non-consecutive terms an individual may serve as Vice-Rector.
2. **Powers and Duties.** The Vice-Rector shall assume the duties and have the powers of the Rector in the absence or disability of the Rector.

In the event of the death, permanent disability or resignation of the Rector, or should the Rector become otherwise permanently unable to perform the duties and functions of the office, the Vice-Rector will become Rector for the remainder of the term, and a new Vice-Rector will be elected. This partial term shall not prohibit an individual from being elected to two one-year terms as set forth herein.

The Vice-Rector shall perform other duties as requested by the Rector or the Board.

The Vice-Rector shall be a member, ex-officio, with full voting rights, of all committees of the Board and shall be counted as a member in determining the quorum.

E. Secretary and Assistant Secretary

- 1. Election and Term.** The Board, at its Annual meeting, or such other time as the Rector and Rector-Elect shall determine but in no event later than the first regular meeting of the fiscal year, elects a Secretary, who shall serve for a one-year term or until a successor has been elected. The Secretary may be re-elected for one additional term. However, there shall be no limitation on the number of non-consecutive terms an individual may serve as Secretary.
- 2. Powers and Duties.** The Secretary shall preside at the meetings of the Board and its Executive Committee in the absence of the Rector and Vice-Rector, and shall perform such other duties as are incident to the office or as may from time to time be assigned by the Rector that may include reviewing the minutes. Any of the enumerated duties of the Secretary may be delegated to an Assistant Secretary as set forth in Article II, Section 6, subsection (E)(3) below.
- 3. Assistant Secretary.** The Board may appoint, in consultation with the President, an Assistant Secretary to the Board, who shall perform any or all of the duties of the Secretary, except for the duty to preside at the meetings of the Board and its Executive Committee. Specifically, the Assistant Secretary shall attend all meetings of the Board of Visitors and the Executive Committee and prepare minutes of such meetings and after approval by the Board, shall sign the minutes and record same in the permanent records of the Board, and shall authenticate and certify true and exact copies of documents that have been approved by the Board to comply with both internal and external requests. The Assistant Secretary shall provide proper notice of all meetings of the Board as required by these Bylaws and by law. In addition the Assistant Secretary shall assist the Board in the discharge of its official duties, and shall under the immediate direction of the President, perform such other duties as may be assigned to him or her by the Board, the Vice-Rector, the Rector, or the President.

The Assistant Secretary's term shall continue until such time as a successor is appointed, or the individual is no longer employed as Assistant Secretary by the University, whichever first occurs.

F. Inability or Incapacity of an Officer to Serve.

- 1. Replacement.** Except as set forth in Section D. 2. of this article, if an elected Officer of the Board is, or will be, unable to serve for a period in excess of thirty (30) days of their elected term, the Rector shall timely call a special meeting of the Nominating Committee to

recommend another member of the Board to serve instead.

2. **Election.** The Board shall vote at its next regulatory scheduled meeting to act on the recommendation of the Nominating Committee.
3. **Terms of office.** Officers elected through these provisions shall serve the remainder of (or the entirety as the case might be) of the replaced Officer's term.

SECTION 7. COMMITTEES

A. Executive Committee.

1. The Executive Committee shall be comprised of the Rector, Vice-Rector, Secretary, the Chairs of the standing committees, and two members-at-large who shall be elected by the Board at the first regular meeting of the year. The Rector shall serve as the Chair, and the Vice-Rector shall serve as the Vice Chair.
2. The Executive Committee shall be authorized to convene and exercise the full power and authority of the Board between meetings of the Board whenever circumstances require immediate action to address matters of an urgent nature, or as the Board may otherwise direct. All Board members shall be notified of meetings and provided the agenda and any documents distributed for such meetings. Any board member who wishes to do so may attend an Executive Committee meeting.
3. Consistent with the provisions of Virginia law, the Executive Committee shall assure that the following activities are conducted and completed as necessary:
 - Development of a statement of governance setting forth the Board's role for recommendation to and adoption by the Board;
 - Periodic review of the Board's Bylaws and recommendation of amendments as deemed necessary and appropriate;
 - Provide advice to the Board on committee structure, appointments, and meetings, as deemed necessary and appropriate;
 - Develop an orientation and continuing education process for Board members that includes training on the FOIA;
 - Creation, monitoring, oversight and review of compliance by Board members with a code of ethics for Board members; and
 - Development of a set of qualifications and competencies for membership on the Board for approval by the Board and recommendation to the Governor.

4. A quorum shall be three (3) members of the Executive Committee. In the event a quorum is not present, other members of the Board may be appointed by the Rector to serve in the place of absent members on an *ad hoc* and temporary basis in order that a quorum be attained.
 5. The Assistant Secretary to the Board shall promptly inform all members of the Board of any action taken by the Executive Committee. The Rector shall report actions taken by the Executive Committee at the next regularly scheduled meeting of the Board.
- B. **Standing Committees.** The Rector-Elect in consultation with the Rector shall appoint the members of each standing committee. The Rector-Elect shall designate the chair and Vice Chair of each committee, except that the Chair of the Governance and Compensation Committee shall be the Vice-Rector.

The Rector, the full Board, the President, or the President's designee may refer matters to a standing committee. In addition to the specific responsibilities provided by these Bylaws, the standing committees shall have any other duties and responsibilities assigned by the Board or the Rector.

A quorum at a meeting of one of the standing committees shall be three (3) members. In the event that a quorum is not present, other members of the Board may be appointed by the Rector to serve in the place of absent members on an *ad hoc* and temporary basis in order that a quorum may be attained. The Rector and/or Vice-Rector shall be counted as a member in determining the quorum for a meeting of a standing committee.

Each standing committee shall adopt and have approved by the Board a charter outlining its roles and responsibilities. Each standing committee shall also prepare an annual work plan (meeting planner) to be shared with the Board.

Each standing committee shall report to the Board at the next regularly scheduled Board meeting.

Each standing committee has the authority to approve the minutes of its meetings without further Board approval. Unless otherwise specifically provided by the Board, the decisions and recommendations of standing committees are advisory and shall be approved and ratified by the Board of Visitors.

The Board shall have the following standing committees:

1. **Academic and Health Affairs Committee.** The primary purpose of the Academic and Health Affairs Committee shall be to assist the Board in fulfilling its fiduciary responsibilities by providing oversight and making recommendations to the Board on all policies and plans consistent with the stated goals and objectives of the University and with its academic health center, including its coordination with the Virginia Commonwealth University Health

System Authority, regarding the following areas:

- Strategic enrollment management
- Academic quality
- Student issues
- Faculty issues
- Research

2. **Intercollegiate Athletics Committee.** The primary purpose of the Intercollegiate Athletics Committee shall be to assist the Board in fulfilling its fiduciary responsibilities for oversight of the University's intercollegiate athletics program including but not limited to the following areas of athletics policy:

- Student-athlete health and safety
- Admissions and academic policies for student-athletes including academic progress and integrity
- Institutional compliance with applicable rules and regulations, including those of the National Collegiate Athletic Association (NCAA) and the Conference
- Ethical behavior
- Athletics personnel
- Finances of the athletics programs, including budgeting, expenditures, and fund balances
- Athletic facilities, including capital expenditures and debt

3. **Audit, Integrity and Compliance Committee.** The primary purpose of the Audit, Integrity, and Compliance Committee shall be to assist the Board in fulfilling its fiduciary responsibilities related to oversight of:

- Soundness of the University's system of internal controls
- Integrity of the University's financial accounting and reporting practices
- Independence and performance of the internal and external audit functions
- Integrity of information technology infrastructure and data governance
- Effectiveness of the University's ethics and compliance program
- Institutional conflict of interest issues
- University's enterprise risk management program
- Legal matters

4. **Finance and University Resources Committee.** The primary purpose of the Finance and University Resources Committee shall be to assist the Board in fulfilling its objectives

and fiduciary responsibilities related to specific policy/policies and oversight of:

- University finances and investments
- University policies on debt management
- Generating resources and stakeholder support of the University's strategic goals, particularly in the areas of government relations
- Development and alumni relations

In addition, the Finance and University Resources Committee shall recommend to the Board the naming of any physical facility or part thereof or any programmatic element of the University as outlined in the Board approved "Policy Guidelines on Recognition of Donors and Friends."

5. **Governance and Compensation Committee.** The primary purpose of the Governance and Compensation Committee shall be to assist the Board in fulfilling its objectives and fiduciary responsibilities related to applicable policies and oversight of:

- Board and University governance issues
- Relationship with affiliated VCU Entities
- Board nominations to Governor
- Presidential valuation and compensation process
- Board self-evaluation
- Review of Board Bylaws
- Review of policies for which the Board is responsible

6. **Facilities, Real Estate and Administration Committee.** The primary purpose of the Facilities, Real Estate and Administration Committee shall be to assist the Board in fulfilling its fiduciary responsibilities by monitoring and overseeing activities related to:

- Facilities planning, design, construction and renovation
- Purchase and divestiture of land, including any easements
- Staff affairs

- C. **Subcommittees.** Each standing committee may establish and appoint subcommittees as necessary, subject to Board approval. Subcommittees are subject to the same procedural rules as the primary committee.

- D. **Nominating Committee.** The Rector shall appoint a Nominating Committee which shall have as its purpose the nomination of candidates for Rector, Vice-Rector and Secretary of the Board for the succeeding year pursuant to Article II, Section 6(B) above, and shall periodically review board leadership succession. Upon election of the Rector for the succeeding year, the Rector and

Rector-Elect shall become members of the Nominating Committee.

- E. **Ad Hoc Committees.** The Rector may, from time to time appoint ad hoc committees of the Board, as the Rector deems necessary for the good conduct of Board and University affairs. Each such committee shall have a chair and at a minimum two additional members, all of whom shall be appointed by the Rector. The duties of all ad hoc committees shall be specified and reported to the Board by the Rector at the time of the appointment. Ad hoc committees are not required to have written charters.

ARTICLE III ADMINISTRATIVE OFFICERS AND OTHER EMPLOYEES OF THE UNIVERSITY

SECTION 1. THE PRESIDENT OF THE UNIVERSITY

- A. **Chief Executive Officer.** The President of the University ("President") shall be the chief executive officer of the University.
- B. **Appointment.** The President shall be appointed by the Board and serves at its pleasure.
- C. **Powers and Duties.** The President, in addition to serving as the chief executive officer of the University, shall also sit on the Virginia Commonwealth University Health System Authority Board of Directors (VCUHS Board) and by statute shall be the Chair of the VCUHS Board. In addition, the President shall also serve on the Virginia Biotechnology Research Partnership Authority Board of Directors and the Virginia Biotechnology Research Park Corporation Board of Directors. The President is a member of the faculty of the University.

As chief executive officer of the University, the President shall have the following powers and duties:

- The President shall have the responsibility for the operation of the University in conformity with the purposes and policies determined by the Board;
- In addition to the positions of other officers identified and established in Article III, Section 2 below, the President shall have the power to establish and modify as he or she deems necessary the internal administrative structure of the University and shall appoint or provide for the appointment of all administrative officers, making a report of his or her actions thereon to the Board at the next regular meeting;
- The President shall act as an advisor to the Board and shall have responsibility for recommending to the Board for consideration those policies and programs which in the opinion of the President will best promote the interests of the University;
- The President shall have the authority to oversee and to administer the policies of the Board;

- The President shall be the primary contact between the Board and the University;
- The President shall provide oversight and shall be accountable for the management of the University;
- The President shall have responsibility for the oversight of strategic planning and implementation as established by the Board;
- The President shall promote the development of both public and private resources to support the mission of the University;
- The President shall recommend an annual budget;
- The President shall serve as the primary spokesperson for the University;
- The President shall manage all matters delegated by the Board, including personnel matters;
- The President shall fulfill all statutory duties; and
- The President shall perform such other duties as may be required by the Board.

D. **Evaluation of the President.** The Board shall be responsible for oversight of the President's performance, and is required by statute to meet with the President annually to deliver an evaluation of the President's performance. The Governance and Compensation Committee of the Board shall be the committee to oversee such evaluation. Changes to the President's employment contract shall be made only by a vote of the majority of the Board's members.

SECTION 2. OTHER OFFICERS

A. **Appointment.** The Provost and senior vice presidential appointments are made by the President, subject to board ratification. Upon consultation with the Rector, the President shall have interim authority to conclude any appointment or action otherwise requiring board approval, subject to ratification by the board. The President also shall report to the board in advance any extraordinary appointment or compensation action that, in the judgment of the President, warrants such reporting to the board.

SECTION 3. CHIEF AUDIT AND COMPLIANCE EXECUTIVE

- B. **Appointment.** The Board, in consultation with the President, appoints, evaluates, and sets the compensation for the Chief Audit and Compliance Executive.
- C. **Powers and Duties.** The Chief Audit and Compliance Executive shall have the powers and duties that are assigned by the Audit, Integrity and Compliance committee, in consultation with the President.

SECTION 4. FACULTY

- A. **Faculty.** The general faculty consists of the President, Provost & Senior Vice President for Academic Affairs, deans, and other academic ranks or titles as approved by the President.
- B. **Tenure of Faculty.** The Board, on recommendations from the President, shall approve all faculty tenure decisions.

- C. **Delegation of Authority.** The Board hereby delegates to the President the authority to establish faculty positions, appoint and/or reappoint faculty, approve faculty promotions and faculty emeritus status, and to determine leaves of absence for and termination of faculty members. The President shall also have the authority to hire, set the compensation for and implement increases, state decreed or otherwise, for all university employees in accordance with VCU's human resources policies.

Academic dean appointments shall require Board approval. Upon consultation with the Rector, the President shall have interim authority to make any academic dean appointment or take any action in connection with the academic dean appointment, subject to ratification by the Board.

ARTICLE IV CONFLICT OF INTEREST COMPLIANCE

Each member of the Board shall comply with state statutes regulating conflict of interest which may include filing an annual financial disclosure statement and completion of required conflict of interest training.

ARTICLE V LIABILITY

To the extent they are acting in their capacity as members of the Board and within the scope of their authority, all members of the Board are considered to be officials of Virginia Commonwealth University and the Commonwealth of Virginia. Each member of the Board who is engaged in carrying out the duties and responsibilities of a Board member is covered as set forth in the Risk Management Plan, which is established by the Commonwealth's Department of the Treasury, Division of Risk Management, with the approval of the Governor. Coverage is subject to the terms and exclusions set forth in the Plan. The Commonwealth's Division of Risk Management has final responsibility for interpretation and determination of coverage under the Plan. A copy of the plan can be obtained from VCU's Safety and Risk Management office.

ARTICLE VI MISCELLANEOUS PROVISIONS

SECTION 1. SEAL.

The corporate seal of the University is the seal displayed in and/or appended to these Bylaws, as appendix A.

SECTION 2. ASSESSMENT OF BOARD PERFORMANCE.

At least every two years, the Board shall assess its performance. The Rector shall determine the method of assessment, subject to Board approval. The Governance and Compensation Committee shall thereafter conduct said board self-assessment.

SECTION 3. CONDUCT OF BUSINESS.

Unless otherwise specified by these Bylaws, all Board and committee meetings, actions, and rulings shall be guided by the most current edition of *Robert's Rules of Order*.

SECTION 4. SUSPENSION OR AMENDMENT OF BYLAWS.

- A. **Procedure.** These Bylaws may be amended in whole or in part at any meeting of the Board of Visitors by a majority vote of all members present at said meeting, provided the Governance and Compensation Committee has submitted its views on the amendment to the Board and that notice of the amendment was included in the regular notice of the meeting.
- B. **Suspension.** Any provision of the Bylaws may be suspended at any regular or special meeting of the Board by a majority of the members present at said meeting.
- C. **Ratification.** No action taken in violation of the Bylaws shall be effective unless ratified in accordance with the Bylaws.

Effective Date. The foregoing Bylaws shall go into effect immediately upon approval; revised September 17, 1992; revised November 17, 1994; revised May 19, 1995; revised May 16, 1997; revised September 17, 1998, effective January 1, 1999; revised February 11, 1999; revised November 14, 2002; revised August 24, 2006; revised August 9, 2007; revised February 11, 2010; revised April 15, 2013; revised May 9, 2014; revised December 12, 2014; revised February 12, 2015; revised May 8, 2015; revised March 23, 2016; revised and restated October 31, 2017; revised March 22, 2019; revised December 13, 2019; revised May 13, 2022; revised September 13, 2024.



Tuition and Fee Public Comment

Policy Type: Local - Board of Visitors

Responsible Office: Office of the President

Initial Policy Approved: 12/13/2019

Current Revision Approved: 09/13/2024

Policy Statement and Purpose

This policy addresses the statutory requirements pursuant to the Code of Virginia.

Investment in the learning experience of students and the future of education is the most important issue facing Virginia Commonwealth University (VCU) and all American institutions of higher education. The costs associated with earning a college degree remains a critical component requiring further examination and inclusion of all voices, in particular, the student voice. This issue is important to the governing Board and university senior leadership members; to that end, it is a priority to maintain the highest levels of transparency and integrity in the setting of tuition and fees.

Typically, a vote to approve the budget, including any tuition and fee increases, occurs typically at the last Board of Visitors meeting of the fiscal year. The Board of Visitors has determined that public comment will be permitted at a time determined by the Board of Visitors prior to the Board's vote. It is the Board's discretion to determine the parameters for making public comments for consideration whether in person and/or submitted in advance pursuant to the Code of Virginia.

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Who Should Know this Policy

All members of the VCU Board of Visitors are responsible for knowing the contents of this policy. The President and staff of the Office of the President must be familiar with its contents and provisions as well as any other individual.

Definitions

Undergraduate Tuition

Undergraduate tuition refers to the base undergraduate tuition applicable to the majority of students. Rates for both resident and non-resident students will be included.

Mandatory Fees

Mandatory fees refers to those fees required of all students such as the library fee, technology fee, university fee, student health fee, activity fee, and the academic support services fee. Tuition and fees relating to specific programs or courses are excluded here but are provided to the Board of Visitors when tuition and fees are voted on, typically at the May meeting.

Contacts

The Office of the President officially interprets this policy and is responsible for obtaining approval for any revisions and questions regarding this policy should be directed to this office.

Policy Specifics

A noticed public comment period will be utilized as an opportunity for the leadership and governance functions of VCU to make the most informed decisions concerning the budget and tuition and fee increases.

This policy codifies the University's commitment to accessibility and affordability and provides detailed information as to what can be expected related to notice of meetings and opportunities for public comment. Specifically, no approval for an increase in undergraduate tuition or mandatory fees shall be brought to a vote without providing students and the public a projected range of the planned increase, an explanation of the need for the increase, and notice of the date and location of any vote on such increase at least 30 days prior to such vote.

Typically, a vote to approve the budget, including any tuition and fee increases, occurs at the May Board of Visitors meeting.

The Board of Visitors has determined that public comment will be permitted prior to the Board's vote. It is

the Board's discretion to determine the parameters for making public comments for consideration whether in person and/or submitted in advance, pursuant to the Code of Virginia.

Forms

Public Comment Portal: <https://president.vcu.edu/board/open-comment-portal/>

Related Documents

[Code of Virginia, §2.2-3701](#)

[Code of Virginia, §23.1-307\(D\) - \(E\)](#)

Revision History

This policy has been revised on the following dates:

12/13/2019

Initially Adopted

09/13/2024

Amended

FAQ

Why do I have to register to participate in the public comment period?

Registering is not required, however in the interest of planning and maximizing the time within the meeting, preference will be given on a first-come first-serve basis to those who have registered, allotting the maximum amount of permitted time for each registrant. After all registrants have been given their time opportunity, the individuals who signed up the day of the meeting will be given opportunity in the order of first come, first serve. In addition should it be necessary to postpone the meeting it will provide a means to advise the registrant of the same.

Who can I contact if I have problems registering?

Contact the VCU Board Liaison. Please see <https://president.vcu.edu/board/> for the contact information for the Board Liaison.



BOV Member Remote Participation in Meetings by Electronic Communication Means and All Virtual Meetings

Policy Type: Local - Board of Visitors
Responsible Office: Office of the President
Initial Policy Approved: 09/18/2015
Current Revision Approved: 09/13/2024

This policy will be reviewed and updated at the September 2025 BOV meeting as required by VA code.

Policy Statement and Purpose

In accordance with the Virginia Freedom of Information Act (FOIA), Virginia Code § 2.2-3700, et. seq., the Board of Visitors ("the Board") has established a written policy allowing for and governing all-virtual meetings as necessary and in compliance with FOIA and participation of its members in meetings by electronic communication means in the event of (a) a personal matter, or (b) a temporary or permanent disability or other medical condition that prevents the member's physical attendance, or (c) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance, or (d) the member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting.

This policy shall apply, strictly and uniformly, to the entire membership and without regard to the identity of the individual member requesting remote participation or to the matters slated for consideration or vote at the meeting.

Participation by an individual member from a remote location is authorized only when a quorum of the Board or committee is physically assembled at the primary meeting location and the voice of the remote participant is able to be heard by all persons at the primary meeting location. The fact of the disability or other medical condition that prevented physical attendance, or the fact of a family member's medical condition requires the member to provide care for such family member prevented physical attendance, or the fact that the distance between the member's principal residence and the meeting location is more than 60 miles, or the specific nature of the personal matter and the remote location from which the member participates will be recorded in the meeting minutes.

Individual participation from a remote location shall be approved unless such participation would violate this policy or FOIA. If such participation from a remote location would violate this policy or

FOIA, such disapproval will be recorded in the Board minutes with specificity.

When individual remote participation is due to a personal matter, such participation is limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

For public transparency real-time electronic access to such meetings will be posted on the Board website with the agenda.

All-virtual meetings must follow the procedures as set forth in this policy.

This policy applies to all committees and subcommittees of the Board. This policy is subject to review annually as required by the Virginia Code.

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Who Should Know this Policy

All Board of Visitor members (“Board members”) as a matter of normal course are responsible for knowing this policy and familiarizing themselves with its contents and provisions.

Definitions

All-Virtual Meeting

A public meeting (i) conducted by a public body, other than those excepted pursuant to subsection C of § [2.2-3708.3](#), using electronic communication means, (ii) during which all members of the public body who participate do so remotely rather than being assembled in one physical location, and (iii) to which public access is provided through electronic communication means.

Electronic communication

The use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

Quorum

A term used to describe the minimum number of members of the Board that must be present at any of its meetings to make the proceedings of that meeting valid. For a committee meeting a quorum is three (3) members of the committee. The Rector and Vice-Rector are counted as members in determining the quorum for a meeting of a committee. For Board meetings, a quorum is a majority of the Board members

Primary meeting location

Published location of the meeting of the Board, committee, or subcommittee.

Remote location

Refers to an alternative location for a Board member other than the main location where the physical quorum is present. The remote location need not be open to the public and must have a general description of the location that is recorded in the Board minutes.

Contacts

The Office of the President officially interprets this policy. Please direct policy questions to the Board liaison in the Office of the President.

Procedures**Remote Participation**

The Board member needing to participate from a remote location must notify either the Rector or Committee Chair as the case may be, without unreasonable delay on or before the day of a meeting, that such member is unable to attend the meeting at the primary meeting location due to (i) a temporary or permanent disability or other medical condition that prevents the member's physical attendance; (ii) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance; or (iii) the fact that the distance between the member's principal residence and the meeting location is more than 60 miles; or (iv) a personal matter, identifying with specificity the nature of the personal matter.

The Board shall approve participation from a remote location unless such participation would violate this policy or FOIA. Board disapproval of participation from a remote location shall be recorded in the Board minutes with the specific rationale for such disapproval. The Board minutes shall include a general description of the remote location from which the Board member participated along with the fact that the Board member participated remotely due to (i) a temporary or permanent disability or other medical condition that prevents the member's physical attendance; (ii) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance; (iii) the fact that the distance between the member's principal residence and the meeting

location is more than 60 miles, or (iv) due to a personal matter along with the specific nature of the personal matter cited by the Board member.

The Board will arrange for the voice of the remote participant to be heard by all persons at the primary meeting location.

All-Virtual Meeting

The Board of Visitors may hold all-virtual public meetings, subject to the requirements and limitations set forth in this policy. Public access to the all-virtual public meeting is provided via electronic communication means as required by Va. Code 2.2-3708.3(D)(2).

No more than two (2) all -virtual meetings of the Board, and 2 all-virtual meetings of any committee or sub-committee, may be held per calendar year and provided that does not represent more than 25% of the meetings per calendar year. A decision to hold an all-virtual meeting of the Board or any committee or subcommittee shall be made by the Rector, upon consultation with the President. Further, no all-virtual meeting shall be held consecutively with an all-virtual meeting.

In order for an all-virtual meeting of the Board, or any committee or sub-committee of the Board, to be held, the following requisites must be met, in addition to those required for all in-person meetings:

- a. The public notice of the meeting required by Va. Code 2.2-3707 shall indicate that the meeting will be all-virtual and state that any change in the method by which the Board, committee or sub-committee chooses to meet will be communicated by issuance of a new statutorily compliant meeting notice in accordance with the requirements of Va. Code 2.2-3708.3(D)(1).
- b. Public access to the all virtual meeting must be provided by a means of electronic communication that allows the public to hear and see (when audio-visual technology is available) all members of the public body participating. A phone number or other live contact information shall be provided for the public to alert the Board if the audio or video transmission of the meeting fails. Staff shall monitor the transmission and if audio or video fails, the Board shall take a recess until public access is restored.
- c. The meeting agenda and agenda packets shall be provided in electronic format, at the same time as they are provided to the Board.
- d. If public comment is customarily received at the meeting when it is conducted in person, the public shall be afforded the opportunity to comment through electronic means.
- e. No more than two members may participate in the all-virtual meeting from a single location unless that location is open to the public.
- f. If an all-virtual meeting goes into closed session, public access to the meeting must be restored before a vote to certify the closed meeting is taken.
- g. Minutes must be taken and must include the fact that the meeting was held using electronic communication means, and identify the means by which the meeting was held.

Forms

There are no forms associated with this policy.

Related Documents

1. Virginia Code §2.2-3700, et. seq.
2. Board of Visitors Bylaws
3. <https://bov.vcu.edu/>

Revision History

This policy has been revised on the following dates:

09/18/2015	Originally Adopted
9/16/2022	Amended
03/23/2023	Amended
09/13/2024	Amended

FAQ

There are no FAQs associated with this policy.



E-MAIL: USE, ACCESS & RETENTION

The use of e-mail in the business place has become routine and is a preferred mode of communication. For state and local government officials and employees, the application of the Virginia Freedom of Information Act (FOIA) relating to access to records and the Virginia Public Records Act (the PRA) relating to the retention of records comes into play.

Government officials and employees frequently ask two key questions about the use of e-mail -- "**Can the public and media access my e-mail under FOIA?**" and "**Do I have to save my e-mail?**"

This document will attempt to answer these questions and provide guidance about the use and management of e-mail by state and local government.

The nature of e-mail

E-mail generally refers to any communication that requires an electronic device for storage and/or transmission.¹ E-mail is a medium for correspondence -- essentially, e-mail is the "envelope" for the communication. For purposes of FOIA & the PRA, e-mail provides a medium for communication, much like a telephone or the U.S. Mail provides a means of communication. The fact that a communication is sent via e-mail is not alone conclusive of whether that e-mail must be accessible to the public under FOIA or retained pursuant to the PRA; one must look at the text and substance of the communication to determine whether it is indeed a public record.

The Virginia Freedom of Information Act

FOIA addresses access to public records. Section 2.2-3701 of the Code of Virginia defines public records for purposes of FOIA to include "*all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.*"

¹ Library of Virginia, Electronic Records Guidelines (effective June 10, 2002).



Clearly an e-mail would fall under this broad definition of a public record, because it applies to all writings and recordings...set down by...mechanical or electronic recording...however stored, regardless of physical form or characteristics. As noted above, e-mail is just the medium, or the envelope, used to convey the communication. Just as a letter sent via U.S. Mail from one public official to another concerning public business would be a public record under FOIA, so would that same communication sent via e-mail.

FOIA requires that unless subject to a statutory exemption, all public records must be open to inspection and copying. Therefore, an e-mail relating to public business would be accessible just like any other public record, and may be withheld from public disclosure only if a particular exemption applies to the content of the e-mail.

The Virginia Public Records Act

While FOIA governs access to records held by state and local government, the PRA governs how long a government entity must retain certain records. The PRA defines "public record" for purposes of records retention, and like FOIA, the definition is fairly broad and would include e-mail as a public record. Section 42.1-77 defines a public record to include recorded information that documents a transaction or activity by or with any public officer, agency or employee of the state government or its political subdivisions. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business.

The PRA sets forth different retention schedules for different types of records. Several factors shape how long a record needs to be held. Many records are only kept for so long as business requires them to be kept, although if a record has historical significance or is created by an agency head or director, it may need to be kept longer. For example, certain records are required to be maintained permanently, such as records from standing committees of the General Assembly, annual reports of state agencies, and correspondence of agency directors. Other records need only be kept so long as they are administratively necessary, such as reminders of events like blood drives or fund raisers, courtesy copies of correspondence, or messages received from a listserv. Along the continuum, other records may be required to be retained for 30 days to ten years, depending on their content. After the retention time has expired for a particular document, then that record may be destroyed pursuant to the guidelines set forth by the Library of Virginia.²

In providing guidance for adhering to the PRA, the Library of Virginia notes that e-mail should be treated the same as paper correspondence. Again, e-mail is only the medium,

² PRA is administered by the Library of Virginia. For more details on retention schedules for particular types of records or for a particular agency, or for information regarding the proper disposal of records, please contact the Library of Virginia. Records retention information and contact information is also available on the Library's website at <http://www.lva.lib.va.us/whatwedo/records/index.htm>.



or the envelope, by which the correspondence is sent; the retention schedule for a particular e-mail will depend on its content and should be preserved the same as its paper equivalent. Both incoming and outgoing e-mail should be retained, along with any attachments sent via e-mail.

Tips for using and managing e-mail

All e-mails related to public business are subject to the provisions of FOIA and the PRA, and should be managed in the same manner as all other public records.

There is a tendency with e-mail to hit the delete button as soon as you are finished with a particular message. However, consideration must be given to whether that particular e-mail must be retained for purposes of the PRA -- you can't automatically delete your e-mail, just as you can't automatically throw away paper correspondence and records.

FOIA governs access to records. The PRA dictates how long you are required to keep certain records. If a government entity keeps an e-mail (or any other record) for longer than its retention schedule requires, that e-mail will still be subject to FOIA if requested. Conversely, if a government entity properly disposes of a record pursuant to a retention schedule, and a subsequent FOIA request is made for that record, FOIA does not require the government entity to recreate the record.

E-mail is often used as a substitute for a telephone call, and is quite informal. However, e-mail creates a record of that communication that must be retained pursuant to the PRA and will be available upon request to the public under FOIA. Consider the consequence of choice to use e-mail instead of the telephone -- it may not be in your best interest to be as informal on e-mail as you are on the telephone.

The Library of Virginia discourages the practice of maintaining permanent records solely in electronic format, without a paper or microfilm backup.³ For records that do not need to be maintained permanently, these e-mails can be printed out and stored in a traditional, paper file (and the electronic copy can be deleted) or electronic folders can be created on the computer to organize e-mails based on functions, subjects or activities. The Library of Virginia suggests that these folders are assigned to your home directory on the computer, and not on the network.

Public officials and employees should not commingle personal and official e-mails. Private e-mails do not need to be retained; e-mails relating to the transaction of public business do. From an e-mail management perspective, it is probably not a good idea to mix personal and official business in the same e-mail. Official e-mails that need to be retained should be maintained with other public records that relate to the same content.

What Every Board Member Absolutely has to Know about FOIA



COMMONWEALTH of VIRGINIA

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Education Section

August 2025

Do not underestimate the importance of Virginia's Freedom of Information Act ("FOIA").¹ This is very serious business. These are laws – not just corporate bylaws or operating protocols that can be disregarded. Violations risk invalidation of board decisions and expose the institution and you personally to embarrassment, litigation, and civil penalties of up to \$5,000.² The greatest loss, however, is the resulting damage to public confidence in you and the institution. In fact, the Governor could publicly request your resignation.

The idea behind FOIA (which was first enacted in 1968) is that the Government's business is the people's business. FOIA ensures that citizens have the right to inspect and copy public records and to attend public meetings.³

FOIA governs many aspects of the operation of boards, and has wide application to the conduct of members, even when they are not at meetings. All members must be aware of the basic requirements of FOIA.

This Synopsis and FAQs are designed to give the Board of Visitors ("BOV" or "Board") a basic understanding of their personal responsibilities under FOIA and to ensure that you are aware that FOIA compliance is your responsibility. It is not comprehensive. It does not cover all aspects of FOIA. Whenever you have any concerns, questions, or uncertainties about FOIA or its application, you should contact your FOIA Officer or University Counsel.

¹ Code of Virginia § 2.2-3700 – 3715.

² § 2.2-3714.

³ § 2.2-3700.

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VIRGINIA’S FREEDOM OF INFORMATION ACT: SYNOPSIS

Documents and Email

- FOIA broadly guarantees public access to public records, including your notes and correspondence concerning University business. This includes e-mail, text messages, voice mail message, digital documents, and even preliminary drafts of documents.⁴ There are numerous exemptions, which are all fact-specific.⁵ Always be sensitive to the potential for public disclosure of your written communications. Any request by the press or any person to inspect your public records should be brought immediately to the University’s attention to ensure a timely and proper reply. Oral and informal requests to you are considered legitimate FOIA requests. Any request for public records, regardless of the request, is a FOIA request.

Meetings

- Public bodies are encouraged to (i) provide public access, both in person and through electronic communication means, to public meetings and (ii) provide avenues for public comment at public meetings when public comment is customarily received, which may include public comments made in person or by electronic communication means or other methods.
- Unlike the private sector, the public (including employees of the institution) and press have a right to be present at your board and committee meetings.⁶
- All meetings of the Board, including its committees and subcommittees, in addition to any other group or entity appointed by the Board to advise it or exercise delegated power, must be conducted in an open meeting with at least three working days advance public notice of meeting time and location.⁷ It does not matter that a meeting involves no actual voting, such as at retreats; if the meeting involves the discussion of activity that the public body has undertaken or proposes to undertake on behalf of the people it represents, it is a “public meeting” for purposes of FOIA.⁸ A meeting exists in the eyes of the law whenever three or more Board members meet and discuss any University matter.⁹ Voting on any University action must always be conducted in open session.¹⁰ Voting by secret ballot or proxy is prohibited.¹¹

⁴ § 2.2-3700.

⁵ See § 2.2-3705.1-3705.8.

⁶ § 2.2-3700.

⁷ § 2.2-3707.

⁸ § 2.2-3701.

⁹ § 2.2-3701. It is not a “public meeting” if two or more members of a public body gather somewhere as long as public business is not intended to be, and in fact is not, discussed or transacted. Similarly, it is not a “public meeting” if two or more members gather at a public forum, informational gathering, candidate appearance, meeting of another public body, or debate, the purpose of which is to inform the electorate or to gather information from the public, as long as public business is not intended to be, and in fact is not, discussed or transacted.

¹⁰ § 2.2-3711(B).

¹¹ § 2.2-3710.

- Once properly convened and in open session, discussions regarding certain limited topics can be held in closed session.¹² The justification for closed session does not depend on whether a subject may be very sensitive or political, or that a confidential setting might encourage more candid exchanges. Closed sessions must be specifically authorized by FOIA.¹³
- Specific procedural steps must be taken to go into closed session, including:¹⁴
 - Advance public notice for the meeting must have been given.
 - During the meeting in open session, the Board must vote on a motion authorizing a closed session. This public motion must reasonably identify the purpose for the closed session, the subject for discussion, and the applicable statutory provision. All three elements are required.
 - While in closed session, the discussion must be related only to the topic identified in the public motion. Take care not to digress into any unrelated areas or other subjects, even if those topics would be eligible for closed session with a proper motion. It is your responsibility both as a matter of law and common sense that you stick to the subject matter described in the motion authorizing the closed session.
 - Any action the Board wishes to take as a result of discussions in closed session must be voted on in open session.
 - When discussion in closed session is adjourned, the chair of the meeting should immediately direct the opening of doors and inviting public/staff into the room for open session.
 - Once back in open session, each member of the body will then be required to certify publicly that his or her discussion in closed session was proper and related to the permitted subject set forth in the motion convening the closed session.
 - The law requires you to invite your University Counsel to all BOV and committee meetings, including all closed sessions.

Electronic Meetings During Declared State of Emergency

- Meetings can be held by electronic communications means (such as by telephone or video conference) whether or not there has been a declared state of emergency, but the rules governing such meetings are different:
 - If the Governor has declared a state of emergency (or the Board's locality has declared a local state of emergency), and the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location, the Board can meet by electronic communication means as long as the purpose of the meeting is to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and responsibilities. The public must be given notice of such a meeting at the same time as Board members, using the best available method given the nature of the emergency. The Board must also make arrangements for public access to such meeting through electronic communication means used by the public body and the opportunity for public

¹² § 2.2-3711.

¹³ § 2.2-3711.

¹⁴ For "closed session" procedures, see § 2.2-3712.

comment should be provided for any meeting where public comment would customarily be received.¹⁵

- The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held shall be stated in the minutes.

Electronic Meetings In Situations Other Than Declared States of Emergency

- For electronic meetings in the absence of a state of emergency, Boards may allow for the remote participation of individual members through electronic communications or hold “all-virtual” meetings only if they adopt a remote participation and all-virtual policy by recorded vote at least once annually which applies strictly and uniformly to all members without exceptions. The participation policy must (1) describe the circumstances under which an all-virtual public meeting and remote participation will be allowed and the process the public body will use for making requests to use remote participation, approving or denying such requests, and creating a record of such requests; (2) fix the number of times remote participation for personal matters or all-virtual public meetings can be used per calendar year, not to exceed the limits set forth in FOIA (described below); and (3) not restrict any individual member who is participating in an all-virtual meeting or who is using remote participation from voting on matters before the board.¹⁶ FOIA also prescribes the following pertaining to electronic meetings:
 - The Board may hold an “all-virtual” electronic meeting provided that (1) the all-virtual nature of the meeting and the means for public electronic access to the meeting are disclosed in the public notice of the meeting;¹⁷ (2) the electronic communication means used for the meeting must allow the public to hear all members of the Board or committee participating in the meeting and, when audio-visual technology is available, to see the members of the Board or committee as well; (3) the Board staff monitor the electronic communication means during the meeting and ensure that any interruption of audio or video results in a suspension of action at the meeting until repairs are made and public access is restored; (4) the proposed agenda and all agenda packets (including, unless exempt, all materials furnished to members for the meeting) are made available to the public in electronic format at the same time that such materials are provided to Board; the public is afforded the opportunity to comment through electronic means, including by written comments, at public meetings when public comment is customarily received.¹⁸ There are two important caveats to the all-virtual meeting rule:
 - During all-virtual meetings, no more than two members of the Board or committee may be together in one remote location unless that remote location is open to the public to physically access it.
 - The Board or any individual committee may not convene an all-virtual meeting i) more than two times per calendar year or 50% of the meetings held per calendar year rounded up to the next whole number, whichever is greater; or ii) consecutively with another all-virtual meeting.

¹⁵ § 2.2-3708.2.

¹⁶ § 2.2-3708.3(D).

¹⁷ Once public notice has been given, the electronic communication means for the meeting cannot be changed without issuance of a new meeting notice.

¹⁸ § 2.2-3708.3(C).

- Additionally, for purposes of a quorum, a member will be considered absent from any portion of the meeting during which visual communication with the member is voluntarily disconnected or otherwise fails or during which audio communication involuntarily fails.¹⁹
- An individual Board member may meet by remote participation through electronic communication means in a Board or committee meeting if before or on the day of the meeting, the board member notifies the board chair that (1) the member has a temporary or permanent disability or other medical condition that prevents their physical attendance; (2) the member is a caregiver who must provide care for a person with a disability at the time of the public meeting (provided that person is a blood, marital or adopted relative or a legal ward) or someone in the member's family has a medical condition requiring care, that prevents the member's physical attendance; (3) that the Board member's principal residence is more than 60 miles from the meeting location identified in the public notice for such meeting; or (4) that the Board member is unable to attend the meeting due to a personal matter (which must be specifically identified). However, a Board member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.²⁰ In addition:
 - There must be a quorum of the Board or committee physically assembled at the primary meeting location (a member with a disability or who is a caregiver for a person with a disability and uses remote participation counts toward the quorum as if the individual was physically present);
 - Meeting minutes shall include a general description of the remote location from which each member participated²¹ and the justification for the remote participation (this should be one of the four justifications noted above); and
 - The Board must arrange for the voice of the remote participant to be heard by all persons at the primary meeting location.

Whenever a member wants to participate by telephone (or other means of electronic communication), please consult with University Counsel.

¹⁹ § 2.2-3708.3(C).

²⁰ § 2.2-3708.3(B).

²¹ Remote locations need not be open to the public.

FREQUENTLY ASKED QUESTIONS

FOIA GENERALLY

What does FOIA do?

In general terms, FOIA defines what a meeting is and requires that all meetings be open to the public.²² It also prohibits discussion of public business among members outside of meetings.²³ There are, however, exceptions to these general meeting requirements that each member should be familiar with.²⁴

FOIA also requires that all public records (with some limited exceptions) be made available upon request to members of the public for inspection and copying.²⁵

All public records and meetings are *presumed* open, and the Board and the institution always have the burden of being prepared to prove that there was a legitimate reason for closing meetings or withholding records.²⁶

FOIA also requires that its open government provisions be liberally construed, and its exemptions be narrowly construed. This means that you should always err on the side of leaving meetings open rather than closing them and releasing documents rather than withholding them.²⁷

Whenever you have specific questions about FOIA or its requirements, please do not hesitate to contact counsel.

FOIA requires that some records be withheld and some meetings be closed, right?

Wrong. The exemptions to disclosure of records and for closed sessions are discretionary, not mandatory. There is no penalty for *releasing* records that *could* be withheld under a FOIA exemption (though other provisions of federal and state law, such as FERPA, may prohibit disclosure). There is also nothing that says a meeting *must* be closed just because it *could* be closed under a FOIA meetings exemption. Please contact counsel if you have concerns about federal or state law that might prohibit release of information.

Who does FOIA apply to?

FOIA applies to all public bodies. In the context of public institutions of higher education, that means that FOIA applies to the institution and all of its officers (including members of the

²² § 2.2-3700.

²³ § 2.2-3707. “Public business” is broadly defined to mean any activity a public body has undertaken or proposes to undertake on behalf of the people it represents.. § 2.2-3701; *see also Gloss v. Wheeler*, 302 Va. 258, 282, 887 S.E.2d 11, 21 (2023).

²⁴ § 2.2-3711.

²⁵ § 2.2-3704.

²⁶ § 2.2-3700(B).

²⁷ § 2.2-3700(B).

Board) and employees.²⁸ It also applies to the operations of the Board itself together with all of its committees and subcommittees, and any other groups or entities appointed by the Board to advise the Board or exercise delegated functions.

MEETINGS

Meetings Generally

Can we meet without telling anyone?²⁹

FOIA requires that all meetings of the Board or any committee or subcommittee be advertised to the public for at least three working days. The notice requirements of FOIA are very specific. The secretary to the Board will handle the details of complying with these. Members of the Board, however, should be aware that any meeting called must be far enough in advance that the secretary has time to prepare the notice properly and advertise the meeting for three working days in the various ways required by FOIA. Any materials the institution supplies to Board members before the meeting also must be supplied to the public at the same time, with the exception of documents that are specifically exempt under FOIA from disclosure.³⁰ This includes any materials one Board member sends to all other members.

If your bylaws call for more notice for meetings than FOIA does, you must comply with the stricter provisions of the bylaws.

Can less than a quorum of the Board – say three or four members – get together informally to discuss affairs of the institution?

No. A gathering of three or more members of the Board where business is discussed is illegal, unless the gathering has been properly advertised for at least three working days as a meeting. It does not matter that a quorum was not present.³¹ It also does not matter if the gathering is in person or virtual; a Zoom call or real-time text or instant message chat between three or more Board members is likely a meeting.³² Similarly, if more than two Board members serve on an institution-related foundation's board, FOIA will likely be implicated.

This prohibition is generally against *three or more* members discussing public business. *Two* members may discuss public business in person, on the phone, or otherwise, with one notable exception. If those two members constitute either the entirety or a quorum of a committee or subcommittee, or other group that has been designated by the Board or Board Chair to advise the Board or has been delegated some responsibility by the Board, then any discussions between them must be properly advertised as a meeting. Otherwise, the gathering is an illegal “meeting” under FOIA.³³

Can't I even go to a cocktail party or dinner with two (or more) other Board members?

Yes, of course you can. While there, you may even discuss business with *one* other member at a time.

²⁸ § 2.2-3700.

²⁹ For details *see* § 2.2-3707.

³⁰ § 2.2-3707(G).

³¹ §§ 2.2-3701 (See “Meeting or meetings” definition) and 2.2-3707.

³² *Hill v. Fairfax County Sch. Bd.*, 284 Va. 306, 312, 727 S.E.2d 75, 78-79 (2012) (citing *Beck v. Shelton*, 267 Va. 482, 491, 593 S.E.2d 195, 199 (2004)).

³³ § 2.2-3701.

Three members, however, may not discuss public business together, and a third member may not listen to the conversation of the other two.

Please keep in mind that this prohibition applies at *all* times and in *all* places – including, for example, lunches, dinners, and social occasions held in conjunction with Board meetings or at annual professional conferences. For example, if a Board holds a luncheon between the morning and afternoon sessions of a meeting, the Board must advertise the luncheon as a meeting and have the luncheon open to members of the public, or ensure that Board members do not discuss any public business during the luncheon. That’s a difficult task, but a mandatory one.³⁴

The Board wants to take a bus tour of campus and our new facilities during a break at our Board meeting. Any problem with this?

No, provided that arrangements are made also for members of the press and public to be present whenever any institutional business is discussed. That means you might need a big bus if any discussions will take place on the bus. (This was a real-life problem at one institution.)

Our Board members routinely serve on ad hoc committees or task forces. Must the institution advertise these meetings?

If three or more Board members are on a committee, the meetings must be noticed. You can avoid noticing all of these meetings by having only one or two board members on the committee or task force. However, any committee, subcommittee, or other entity created by the Board to perform delegated functions constitutes a “public body” for which any meeting must be treated as any other Board meeting.³⁵

We hold an annual retreat. This is a very informal work/training session. No business is conducted and no action is taken. Do we have to advertise this meeting and allow the press and members of the public to attend?

Absolutely. Any get-together of three or more members at which the business or operations of the institution (or any other activity that the public body has undertaken or proposes to undertake on behalf of constituents) are discussed is a “meeting” under FOIA. Retreats and work sessions are no exception. They must be properly advertised and must be open unless an exemption applies to a specific matter under discussion.³⁶

Who can come to our meetings?

Anybody who wants to may attend your meetings. All meetings must be open to the public. Any member of the public (including, of course, press, employees, and students) has a right to attend, listen, and make a video or audio recording of any meeting. The Board can put reasonable restrictions on recording to ensure that actions of the press or public do not disrupt the meeting.³⁷

You will, at times, have outside consultants present at your meetings. They will not be familiar with FOIA and may expect or request confidentiality that FOIA does not permit. The

³⁴ § 2.2-3701.

³⁵ § 2.2-3701.

³⁶ § 2.2-3701.

³⁷ § 2.2-3707(H).

Board and staff should provide these consultants with information that will reduce the conflict between their expectations and what FOIA permits.

Do we have to tape record our meetings?

No. Recording meetings is not required. However, proper minutes must be taken. Draft minutes and final minutes must be posted to the institution's website and the Commonwealth Calendar within seven working days of final approval.³⁸ The secretary to the Board will ordinarily have this responsibility.

Do we have to livestream our meetings?

The public must have real-time electronic access to regularly scheduled meetings of the full board. This requirement does not apply to a meeting, tour, or gathering that takes place outside the usual location of the board meeting. Additionally, this requirement currently only applies to full board meetings, and not for meetings of committees or subcommittees.³⁹

Do we have to take minutes?

Yes. FOIA requires that minutes be taken of every meeting, including retreats or work sessions. Minutes must include (a) the date, time, and location of the meeting; (b) the members of the public body recorded as present and absent; and (c) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken.⁴⁰ Draft minutes that fairly reflect actions taken must be posted on the website and the Commonwealth Calendar within ten days following the meeting. Final approved meeting minutes must be posted within three working days of final approval.⁴¹

Closed Meetings

What are the exceptions to open meetings? When can we hold a closed session? ⁴²

FOIA has 55 exceptions to the open meetings requirement, not all of which will apply to every public body. The exceptions most likely to be utilized by Boards to justify closed sessions are:

(1) *the personnel exception*: discussion, consideration, or interviewing of prospective candidates for employment; or the discussion of assignment, appointment, promotion, performance, demotion, salaries, discipline, or resignation of *specific* employees. This exception does not apply to discussion of members of the Board themselves. It is also inapplicable to discussions of general policy or operations – for example, reorganization – that would refer to reassignment or laying off of employees – unless the discussion centers upon *specific* employee(s).

³⁸ § 2.2-3707.1.

³⁹ See SCHEV Report on a Minimal Uniform Standard to Improve Transparency of College and University Governing Boards: <https://rga.lis.virginia.gov/Published/2021/RD617/PDF>. The requirement to livestream meetings will be extended to committees and subcommittees in July 2026 if the 2026 General Assembly reenacts H2452 which would codify the livestreaming requirement.

⁴⁰ § 2.2-3707(I).

⁴¹ § 2.2-3707.1.

⁴² For full list of exceptions, see § 2.2-3711(A). The statute does refer to the exemptions for “closed meetings” but as will be discussed, a more accurate description is that they are a “closed session” within a meeting. The term “closed session” will be used in these FAQs.

(2) *the scholastic record exception*: discussions or consideration of admission or disciplinary matters, or other matters that would involve disclosure of information in scholastic records (as defined in FOIA) of specific student(s). Generally speaking, however, the student or his lawyer is entitled to attend those closed sessions.

(3) *the real property exception*: discussion or consideration of the acquisition or disposition of real property where open discussion would adversely affect the bargaining position or negotiating strategy of the institution. This exception does not apply once the real property has been acquired or disposed of, and does not include potential use of real property.

(4) *the prospective business or industry exception*: Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

(5) *the investment exception*: discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the institution would be adversely affected. This exception might occasionally be invoked during discussion of endowment funds investment.

(6) *the legal advice and work product exceptions*: consultation with legal counsel for legal advice on specific matters requiring legal advice, and consultation with counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body.

(7) *the development exception*: discussion or consideration of matters related to gifts, bequests, and fund-raising activities, and grants and contracts for services or work to be performed by the institution.

(8) *the honorary degree exception*: discussion or consideration of honorary degrees or special awards.

(9) *the terrorism or cybersecurity exception*: discussions related to plans to protect public safety as it relates to terrorist activity and the response to that activity. This exception also includes discussion of specific cybersecurity threats and vulnerabilities.

(10) *the contract exception*: the discussion of the award of a public contract involving the expenditure of public funds, where discussion in open session would adversely affect the bargaining position or negotiating strategy of the institution.

You should always consult with University Counsel well in advance of going into any closed session. The above are brief descriptions of exceptions for going into closed sessions – the “basics.” In each case, there are additional, specific legal criteria or requirements to be considered.

When are we required to go into closed session?

You are never required by law to go into closed session. FOIA gives the Board the option of doing so when the topic of discussion falls within a FOIA open meeting exception.

What must we do to go into closed session?

First, all meetings must have been properly noticed. FOIA does not permit a “closed meeting.” All meetings are open, but for limited purposes, you may go into a “closed session.” This is so even if the only reason the Board is having the meeting is to go into closed session. A closed session may be held as a small part of a larger open meeting, or a meeting may be called and noticed specifically for the purpose of having a closed session. But in any event, all meetings must first be convened as an open meeting, and then proper procedures must be followed to go into closed session. Closed sessions must be followed by an open session certification that the closed session was proper.⁴³

A detailed motion must be made to go into closed session. That motion, which must be included in the open meeting’s minutes, must identify: (1) the closed session’s subject matter; (2) the closed session’s purpose, i.e., what you are talking about and why; and (3) the specific exemption under § 2.2-3711(A) that applies. General references to FOIA or to the subject matter of the meeting do not suffice.⁴⁴

Your counsel can provide a “script” to use for going into closed session.

What if we are in open session with only the Board and President present, and we want to discuss something that we would ordinarily discuss in closed session. Can’t we do that without going through the formalities?

You certainly may hold the discussion without going into closed session, but there are some shortcomings to that approach, including that minutes would have to be taken, whereas minutes would not be required in a closed session.⁴⁵

What can we discuss in closed sessions?

Once the Board properly goes into closed session, you can discuss only those specific matters identified in the motion to go into closed session. For example, if the Board went into closed session to discuss “personnel matters – specifically the salary of the president,” the Board could not discuss any other matter, not even a different personnel matter, even if that other matter might have been the proper subject of a closed session had it been included in the motion.⁴⁶

It’s easy to stray from the topic identified in the motion for closed session. Your counsel may call any deviation to your attention but you should also be aware if the topic strays and ask counsel if you have concerns.

Who is permitted to go into a closed session with the Board?

Just because the Board goes into closed session, it does not mean that everyone other than Board members must be excluded. The Board can allow anyone to attend that the Board believes is necessary to the discussion.⁴⁷ That said, it is best to allow *only* those persons deemed necessary to the discussion.

⁴³ § 2.2-3712(D).

⁴⁴ § 2.2-3712.

⁴⁵ § 2.2-3712(I).

⁴⁶ § 2.2-3712(C).

⁴⁷ § 2.2-3712(F).

Governing boards are required by law to invite and include legal counsel in all meetings, including closed sessions.⁴⁸ The Board is focused on conducting its business, and not focused on making sure it discusses only matters for which it went into closed session. It is very easy to stray from the central discussion, and the lawyer can help focus attention on keeping the Board within legal bounds. This is important because each individual Board member must certify upon leaving closed session that nothing was discussed other than the matter(s) mentioned in the motion to go into closed session.⁴⁹ Your counsel can also identify that legal advice may be needed when Board members are unaware that legal issues are implicated.

Who decides when closed session is appropriate?

The Board as a whole is responsible for deciding whether to go into closed session and who should be included and excluded. The Board decides to go into closed session through passage of the motion to do so. As a matter of governance, the Board as a whole also should decide who should stay and not rely solely on the Rector, Committee Chair, the secretary to the Board, or the President to make that call.⁵⁰

Can we vote in closed session?

Well, yes and no. The Board can take non-binding votes – straw-polls, of sorts – to get a sense of how a public vote will go. No “official” vote, however, may be taken. Any action that is required as a result of discussions in closed session must be taken after going back into the open meeting.⁵¹ Members are not legally bound to vote in the open meeting as they indicated they would in closed session.

What do we do when we have finished our closed session discussions?

The Board must reconvene, by motion, in open session following a closed session, even if they have no more business to conduct. After the room is opened and visitors are informed that the meeting is now open, each member of the body must affirm by roll call or recorded vote that only those matters lawfully exempted and identified in the motion to close the meeting were heard or discussed. Any member who believes matters outside the scope of the motion were discussed must say so prior to the vote. A statement that describes the substance of the departure must be included in the minutes.⁵²

Board members must take the certification process seriously. Failure to certify that the closed session was held properly does not affect the validity or confidentiality of matters discussed in the closed session or action taken on those matters later in the open meeting.⁵³ However, a deviation from the proper subject of the closed session and the failure of a unanimous certification vote could subject the Board to public criticism. Furthermore, if a court finds that a public body voted to certify a closed session it should not have certified, a court may impose a penalty on the public body of up to \$1,000.⁵⁴

⁴⁸ § 23.1-1303(B)(1).

⁴⁹ § 2.2-3712(D).

⁵⁰ § 2.2-3712(F).

⁵¹ § 2.2-3711(B).

⁵² § 2.2-3712(D).

⁵³ § 2.2-3712(E).

⁵⁴ § 2.2-3714(C).

May Board members talk with other people about matters that were discussed in closed session?

There is no *legal* prohibition against Board members revealing discussions held in closed sessions and the Board itself may not prohibit such. Board members are officers of the Commonwealth, and within legal parameters, each must decide how to best execute their responsibilities to the Commonwealth and the institution. Common sense, professional norms, and individual consciences must dictate Board members' actions. One notable exception from Federal law: FERPA generally prohibits all school officials, including Board members, from revealing information obtained from student records. Other privacy requirements outside of FOIA may exist under federal and state law. Please consult counsel if you have questions.

Should minutes be taken in closed session?

Not necessarily. There is no requirement that minutes be taken in closed session.⁵⁵ Any minutes that are taken need not be disclosed. They *may* be released, however, in the Board's discretion. In general, a Board may prefer not to take minutes because there would not be any documents that could be released inadvertently.

What is an executive session?

The term executive session no longer has any legal significance. Under FOIA, there is a meeting and you are either in open session or closed session. For that reason, we strongly suggest that Boards abandon using the terminology "executive session." Further, it is common for Board members and others to confuse "executive session" and "executive committee."

Meetings Using Electronic Communication Means⁵⁶

May we meet by telephone or video?

Sometimes. Under FOIA, meetings to discuss or transact public business *generally* may not be conducted by telephone, video, or other electronic communication means. Instead, members must be physically assembled in one place. However, a Board may conduct a meeting through electronic means or allow individual members to participate remotely, provided that it strictly complies with the special FOIA provisions governing "all-virtual" meetings and "remote participation," including the annual adoption of a policy for all-virtual meetings and remote participation.

What is the difference between an "all-virtual public meeting" and "remote participation"?

Virginia law recognizes two categories of electronic communications for Board meetings in situations other than a declared state of emergency: "all-virtual public meetings" (when the entire Board participates electronically), and "remote participation" (when individual members participate electronically).⁵⁷ An all-virtual public meeting is a public meeting (i) conducted by the Board using electronic communication means, (ii) during which all members of the Board who participate do so remotely rather than being assembled in one physical location, and (iii) to which public access is provided through electronic communication means. Remote participation is

⁵⁵ § 2.2-3712(I).

⁵⁶ All rules regarding all-virtual meeting can be found in: § 2.2-3708.3.

⁵⁷ § 2.2-3708.3.

participation by an individual member by electronic communication means in a public meeting where a quorum of the Board is otherwise physically assembled.⁵⁸

Must all-virtual meetings be open to the public?

Yes. The public is entitled to attend open all-virtual meetings, and the electronic communication means used must allow the public to hear all members of the Board or committee participating in the meeting and, when audio-visual technology is available, to see the members of the Board or committee as well. If the all-virtual meeting is a meeting in which public comments are customarily received, the public must be afforded the opportunity to comment through electronic means, including by way of written comments. Members of the public must be provided with the agenda, agenda packets, and all other materials provided to the Board, unless the information is prepared for a closed session, or otherwise exempt.⁵⁹

How much notice must be given of all-virtual meetings?

The notice required for all-virtual meetings is three working days – the same as for other meetings. As with other meetings, the secretary to the Board ordinarily will handle posting the proper notice. Again, if Board bylaws require more than three working days' notice, the longer notice period must be met.

There are very specific requirements regarding the notice that require many details about the meeting to be known in advance. For example, the notice must specify the electronic communication means by which members of the public may listen to or observe the meeting. It is a good idea to consult with counsel prior to issuing a notice for an all-virtual meeting.

May members of the board call in from different locations?

Yes, but there are some limitations. No more than two members of the Board or committee may be together in one remote location unless that remote location is open to the public to physically access it.⁶⁰

May a member call in from wherever he or she happens to be at the time of the meeting?

Yes, unless the remote location includes the presence of more than two Board or committee members, in which case it must have been identified in the notice.

If a remote location that is open to the public is noticed, then the member decides to attend at another location, may we then omit the original location?

No. Once a location is noticed as a remote location, public access must be provided at that location unless the entire meeting is cancelled and re-noticed for at least three working days later.⁶¹

If something comes up after the three working days' notice that prevents a board member's physical attendance at a meeting, can a board member still participate?

⁵⁸ § 2.2-3701.

⁵⁹ § 2.2-3708.3(C).

⁶⁰ § 2.2-3708.3(C)(7).

⁶¹ § 2.2-3708.3(C)(1).

Yes, but only under certain conditions as long as the Board has adopted a remote participation policy. A member may participate remotely (including telephone or videoconference) if on or before the day of the meeting, a member notifies the chair that (1) the member has a temporary or permanent disability or other medical condition that prevents their physical attendance; (2) the member is a caregiver who must provide care for a person with a disability at the time of the public meeting (provided that the person is a blood, marital or adopted relative or a legal ward) or someone in the member's family has a medical condition requiring care, that prevents the member's physical attendance; (3) that the Board member's principal residence is more than 60 miles from the meeting location identified in the public notice for such meeting; or (4) that the Board member is unable to attend the meeting due to a personal matter (which must be specifically identified).⁶² The Board must have a written policy that allows for such remote participation and the chair must approve the board member's participation. A quorum of the Board must be otherwise physically assembled.⁶³ There are several other requirements and limitations, so please consult with counsel if this issue arises.

May we hold all of our meetings as all-virtual meetings?

No. The Board or any individual committee may not convene an all-virtual meeting i) more than two times per calendar year or 50% of the meetings held per calendar year rounded up to the next whole number, whichever is greater; or ii) consecutively with another all-virtual meeting.

Must the all-virtual meeting be recorded or minutes kept?

There is no requirement that the meeting be recorded. However, minutes must be kept just as with physical meetings.⁶⁴

What if a phone or video goes out or there is some other problem with communication during the all-virtual meeting?

If during the meeting there is any interruption in the audio or video communication, the meeting must be suspended immediately and may not be resumed until repairs are made. The notice of the meeting must include a phone number to notify the Board of any interruption.⁶⁵ For purposes of a quorum of a meeting using audio-visual technology, a member is considered absent from any portion of the meeting during which visual communication with the member is voluntarily disconnected or otherwise fails or during which audio communication involuntarily fails.⁶⁶

May a member call in on the telephone and participate in discussion at a meeting so long as the member does not vote?

If the institution cannot satisfy all statutory requirements to conduct an all-virtual meeting, and the member cannot satisfy the statutory requirements for remote participation, a member may call in from a location, provided that the member *only listens*, and does not otherwise participate in any manner. However, the more conservative and safer approach would be to avoid this scenario.

⁶² §§ 2.2-3708.3(B); 2.2-3701.

⁶³ § 2.2-3701.

⁶⁴ § 2.2-3708.3(C)(10).

⁶⁵ § 2.2-3708.3(C)(4).

⁶⁶ § 2.2-3708.3(C)(3).

What types of meetings may be held as all-virtual meetings?

Any otherwise-permitted meeting of the Board, including closed sessions and emergency meetings, may be held as an all-virtual meeting. Meetings of committees or subcommittees of the Board also may be held as all-virtual meetings, but must comply with the same requirements as all-virtual meetings of the entire Board, including the requirement that the Board annually adopt a policy for all-virtual meetings and remote participation applicable to such committee or subcommittee.⁶⁷

May we use email to communicate between meetings?

The nature of the particular email use is an important factor in determining whether its use is proper.

There is nothing improper or illegal about using email in and of itself. Email provides a fast, efficient means of communication for you in your public service life, just as it does for you in your personal and professional life. Nothing prohibits the use of standard email for general communication between or among members. This type of communication is analogous to mailing copies of a letter or mass distribution by fax, and is not specifically governed by the meeting provisions of FOIA.

It is important to note, however, that the *nature of e-mail use* will determine the legality of its use. No *lawful* meeting may be held by email. That is to say, if three or more members of a public body (or a quorum if less than three) communicate by virtually instantaneous e-mail or text or instant messages, or if members are present at computers to receive and send e-mail simultaneously, that may well constitute an *illegal* meeting.⁶⁸

When the use of e-mail more resembles communication through ordinary mail, with significant delay between receipt and response, there is no “meeting” under FOIA. In contrast, when the exchange of e-mails resembles an assemblage of members of a public body, in that e-mails are being sent and responded to in quick fashion, such that there is a feature of simultaneity, then such an exchange may be a “meeting” under FOIA, albeit an unlawful meeting for lack of public notice.

Board members should exercise extreme caution in the use of email. Use of distribution lists could set the stage for an illegal meeting. Consider, for example, that a Board member sends an email to all members of the Board, and two of those members happen to be sitting at their computers – not an unlikely situation. If those two members respond to the message using “reply all” within a short timeframe, we may have an *illegal meeting*, subjecting the members to public criticism and the monetary penalties of FOIA. Please avoid sending a reply to all Board members at the same time.

Also, keep in mind that emails that discuss the transaction of public business are “public records” under FOIA and must be retained for the duration of the applicable records retention period (see “What are the applicable records retention periods?” below) and must be produced in response to a FOIA request (see “Records,” below). Be careful what you write.

⁶⁷ § 2.2-3708.3(D).

⁶⁸ *Hill v. Fairfax County Sch. Bd.*, 284 Va. 306, 312, 727 S.E.2d 75, 78-79 (2012) (citing *Beck v. Shelton*, 267 Va. 482, 491, 593 S.E.2d 195, 199 (2004)).

Emergency Meetings

What if the University or Board has an emergency? Can we meet without three days' notice?

Yes, but only if the Governor has declared a state of emergency (or the Board's locality has declared a local state of emergency), and the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location. If that is the case, then the Board can meet by electronic communication means as long as the purpose of the meeting is to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and responsibilities.⁶⁹ The public body must give notice that is "reasonable under the circumstances." In an emergency, notice must be given to the public and to Board members at the same time.⁷⁰

May we hold an emergency meeting without three days' notice?

Possibly, depending upon the nature of the emergency. If an emergency meeting is called, the Board must give public notice using the best available method given the nature of the emergency. Notice must be given to the public contemporaneously with that given members of the Board.⁷¹

If an emergency meeting is held, must public access be provided?

Public access to an emergency meeting is required, but may be offered through communication means, including videoconferencing if already used by the Board. The Board must meet all other meeting requirements; for example, minutes must be kept. Furthermore, the minutes of the meeting must state the nature of the emergency.⁷²

PUBLIC RECORDS

What does FOIA require regarding public records?

In general, FOIA requires that unless an exception applies, all records prepared, owned or possessed by a public body or its officers, employees, or agents (including Board members) in the transaction of public business must be made available to Virginia citizens and members of the media upon request. They are entitled to read and inspect the document and to make copies. (Generally, institutions find it easier to provide requestors with copies rather than requiring the requestor to make the copies.) We generally refer to a request for public records as a "FOIA request."⁷³

What is a "public record"?

Public records are basically anything the institution and its officials and employees use to transact public business and record data, whether produced by them or others. Records include (among other things) paper documents such as copies of letters, contracts, memos, etc. Also included are video tapes and audio tapes; digital documents on computer hard drives and

⁶⁹ § 2.2-3708.2.

⁷⁰ § 2.2-3707(D).

⁷¹ § 2.2-3708.2(1).

⁷² § 2.2-3708.2.

⁷³ § 2.2-3704.

servers; and text messages on cell phones – in short, anything that records or documents the transaction of public business is a public record.⁷⁴ This includes anything in a Board member’s personal phone, home or work computer, or otherwise in his or her possession.

As for what constitutes transacting “public business,” construe the term broadly. If the subject matter of a document is something over which the public body has supervision, control, jurisdiction, or advisory power, or is otherwise connected to the public trust placed in the University or its members, officers, or employees, it’s a public record.

Do FOIA requests have to be in writing?

Absolutely not. Any request made for records is a FOIA request, whether made orally, by letter, or by email. Additionally, the person requesting records need not use any magic words, such as “records,” or “FOIA.”⁷⁵ The requestor is not required to tell you why he or she is asking for the records or what they intend to do with them, and you should not ask.

Whenever anyone asks you for anything related in *any way* to the business of your institution, you should report it immediately to the institution’s FOIA officer – even if you do not have any records you believe to be responsive to the request. Others within the institution may have responsive records, and the institution is under a very tight time frame within which to produce the records or object to production.⁷⁶

Do I have to produce records that are responsive to a FOIA request?

Yes. The public body has to be able to review requested records to determine if they are public records, if they are responsive to the request, and if they are potentially exempt. Every employee and representative of the public body has a duty to help the body comply with its FOIA obligations. In addition, a court can impose upon individuals who “willfully and knowingly” violate FOIA, a civil penalty of \$500 to \$2,000, rising to a penalty of \$2,000 to \$5,000 for subsequent violations.⁷⁷ Individuals also can be held liable under FOIA if, intending to avoid FOIA scrutiny, they alter or destroy a public record before the expiration of the applicable record retention period.⁷⁸ Upon a finding of liability, a court can fine an offending individual up to \$100 per record destroyed.

What are the applicable record retention periods?

Virginia public institutions of higher education are subject to the Virginia Public Records Act (VPR).⁷⁹ VPR establishes records retention schedules and prohibits institutions from destroying or discarding a public record unless the applicable retention period has expired.⁸⁰ The specific retention schedules for state agencies, including institutions of higher education, are developed by the Library of Virginia.⁸¹

⁷⁴ § 2.2-3701.

⁷⁵ § 2.2-3704(B) (only stating that “a request for public records shall identify the requested records with reasonable specificity”).

⁷⁶ § 2.2-3704.

⁷⁷ § 2.2-3714(A).

⁷⁸ § 2.2-3714(B).

⁷⁹ §§ 42.1-76 - 91.1.

⁸⁰ § 42.1-86.1.

⁸¹ See General Schedule No. GS-111 at https://www.lva.virginia.gov/agencies/records/sched_state/index.htm

Are there exceptions to the requirement that the public body produce requested records?

Yes. In fact, there are well over a hundred exceptions. Your responsibility as a Board member is to report any request for records to your institution's FOIA officer or counsel. They will help you and others determine what exemptions might apply and how best to respond to the request.⁸² The role of the FOIA officer is to assist in document collection to be responsive. Legal questions should be directed to legal counsel.

How long do I have to produce records in response to a FOIA request?

The institution has only five working days to respond initially, thus the importance of reporting any request immediately to the institution's FOIA officer. The FOIA officer will assist you and others in gathering documents and properly responding to the request. Even if the institution invokes the permitted extension of time, the initial response still must be made within five working days, and a final response must be made within 12 working days of the initial request, unless other arrangements are worked out between the FOIA officer and the requestor.⁸³

Never attempt to respond to a FOIA request on your own without consulting your FOIA Officer or counsel.

Would a FOIA request require me to give an account of some event I witnessed, for example, write a description of a discussion I had with another Board member?

No. FOIA only requires the production of already-existing public records. It never requires that a record be created. (Please note that pulling data from an existing database or other structured collection of data is not creating a record.) At times, an institution may find it preferable for any number of reasons to create a new document rather than producing the existing documents that were requested. That's fine, as long as the requester agrees.

What about my personal documents, including for example, handwritten notes such as those from meetings or discussions with alumni, email at home on my personal computer, etc.?

First, please understand that *any* record (letter, memo, scribbled note, text message, email, audio recording, or any other) that in any way relates to the business of the institution is *not* a personal document, it is a *public record*. This is the case no matter where it is located or what account is used to send it. Therefore, for example, if the institution receive a FOIA request for text messages or emails located on personal devices or accounts, records would have to be produced if responsive to the request.⁸⁴

*PENALTIES*⁸⁵

So what if we violate FOIA? What's the big deal?

Violations of FOIA can have serious consequences. Any action taken by the board at a meeting not conducted in accordance with FOIA could be null and void.⁸⁶ Any citizen can file a

⁸² To view the exclusions, see §§ 2.2-3705.1 through 2.2-3705.8 and § 2.2-3706(B).

⁸³ § 2.2-3704(B).

⁸⁴ §§ 2.2-3701; 2.2-3704(A).

⁸⁵ For violations and penalties, see § 2.2-3714.

⁸⁶ *Berry v. Bd. of Supervisors*, 302 Va. 114, 148 (2023); Op. Va. Att'y Gen. 08-078 (2009) (Failure to give notice of meeting invalidates city council's appointment of nominee to school board).

complaint in court if they believe that the institution has violated FOIA. Courts can hold individuals personally liable for willful and knowing violations and can issue injunctions even in the absence of willfulness or knowledge.⁸⁷ It is up to the officer or employee to prove that an exception to FOIA was cited appropriately. Officers and employees may rely in good faith on Virginia FOIA Council opinions.⁸⁸ However, if not successful, as noted above, the offending board member, officer or employee can be fined personally.⁸⁹

Members of the Board are entrusted with the public's confidence, and a FOIA violation is a breach of that trust. The General Assembly has determined that, with specific exceptions, the public's right to open government is not to be violated. Extreme embarrassment to the University and you personally can result from FOIA violations.

⁸⁷ *Suffolk City Sch. Bd. v. Wahlstrom*, 302 Va. 188, 211-214, 219 (2023).

⁸⁸ § 2.2-3715.

⁸⁹ As mentioned previously, a public body also may be fined up to \$1,000 if it votes to certify a closed session that was not held in accordance with FOIA.

The Virginia Freedom of Information Act & Social Media

Records, Meetings, and Best Practices

What exactly is “social media” for the purposes of FOIA?

Can social media posts be public records?

What about social media posts from other people?

What about record retention?

Can a meeting be conducted on social media?

Tips for Best Practice

Where do I go for more information?

The Virginia Freedom of Information Advisory Council receives many questions about how to handle requests for copies of social media posts and questions about whether the use of social media may constitute a meeting subject to the Virginia Freedom of Information Act (FOIA). This guide compiles answers to a number of frequently asked questions as a reference to help determine the FOIA implications for social media use and to provide tips for best practice and additional resources.

What exactly is “social media” for the purposes of FOIA?

FOIA does not define “social media,” but the Code of Virginia defines a “social media account” as “a personal account with an electronic medium or service through which users may create, share, or view user-generated content, including, without limitation, videos, photographs, blogs, podcasts, messages, emails, or website profiles or locations.”¹ This definition covers many of the popular sites and technologies we use every day, such as Facebook and Twitter, but also many less commonly used sites and technologies that continue to proliferate and develop.

Unlike many older forms of communication, various technologies used for social media not only generate records, but also allow multiple users to communicate simultaneously. For example, a paper letter sent through regular mail could generate a record, but does not provide for simultaneous communication. Conversely, a conference call allows simultaneous communication but does not generate a record unless someone specifically takes steps to record the conversation. By contrast, the use of public forums, email messages, Facebook, Twitter, and other forms of social media may both create records and allow simultaneous communication between multiple people. For this reason, different forms of social media may implicate both the public records and the public meetings provisions of FOIA.

Can social media posts be public records?

FOIA does not distinguish between social media and other types of records. As is often the case, technology has developed more quickly than changes in the law. However, the term “public records” is defined broadly to include all types of records that are prepared, owned, or possessed

¹ Va. Code § 23.1-405 (providing a definition in the context of students at public institutions of higher education); *see also* § 40.1-28.7:5 (providing a nearly identical definition in the context of public employees’ social media accounts).

by a public body or its officers, employees, or agents in the transaction of public business.² The definition is broad enough to include social media activity. Presuming the posts were made (1) by a public body, official, employee, or agent and (2) in the transaction of public business, then those posts are public records subject to FOIA.

Examples of posts that are “public records” subject to FOIA:

- A town council posts notice of its upcoming public meetings on the town’s Facebook page.
- A state agency posts a link to proposed regulatory changes on Twitter.
- A public employee uses Facebook messages or email to discuss public business with a fellow employee or a citizen. (Note that such messages are public records regardless of what account is used by the public employee.)

Examples of posts that are NOT “public records” subject to FOIA:

- Personal messages that do not pertain to public business (again, regardless of the account used).
- Political messages, such as an announcement of a person’s intent to seek election or reelection to public office.

What about social media posts from other people?

The definition of “public record” includes records merely “in the possession of a public body, its officers, employees or agents in the transaction of public business.” Following that concept, posts made by other persons on the social media account of a public body, official, or employee may be public records IF they are in the transaction of public business.

Examples of posts by others that are “public records” subject to FOIA:

- A citizen makes a FOIA request on a public body’s Facebook page.
- A citizen posts a recommendation on a public matter to a public body’s Twitter account.
- A lobbyist sends email to all members of a public body concerning a matter on the public body’s next meeting agenda.

Examples of posts by others that are NOT “public records” subject to FOIA:

- Various forms of “spam”—such as unsolicited advertisements for a private business posted by a private party onto a public body’s Facebook page.
- “Trolling”—such as purely derogatory comments or attacks on personal character or other “off-topic” posts designed to incite an inflammatory response that do not relate to the transaction of public business. (Note that posts using harsh or pejorative language may still be “public records,” as it is the content that matters, not the way in which it is expressed.)

² Va. Code § 2.2-3701, “Public records” means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.”

- Posts that are purely personal in nature and do not concern public business (social events with family and friends, jokes, pictures of pets, etc.).

What about record retention?

Record retention is addressed under the Virginia Public Records Act, which is administered by the Library of Virginia. Please see the Library’s “Records Management and Social Networking Sites” guide, available on the Library’s website at <https://www.lva.virginia.gov/agencies/records/tips/documents/socialmediatips.pdf>.

Can a meeting be conducted on social media?

As noted previously, various types of social media allow multiple people to communicate simultaneously. The definition of “meeting” in FOIA includes:

work sessions, when sitting physically, or through electronic communication means . . . as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

The definition of “meeting” excludes gatherings of employees of a public body, gatherings of members where there is no discussion or transaction of public business, and certain public forums, candidate appearances, and debates.³ The definition of “electronic communication” means “the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.”

Reading these definitions together and considering the capabilities of social media, it is clear that if social media is used to discuss or transact public business by three or more members of a public body (or by a quorum, if the quorum is less than three members) assembled together simultaneously (in other words, through “real-time” communications), then that use of social media would constitute a “meeting” subject to FOIA. As such, it would have to comply with rules for electronic meetings set forth in § 2.2-3708.2, which include various heightened procedural requirements and limitations.⁴

³ Va. Code § 2.2-3701, “‘Meeting’ or ‘meetings’ means the meetings including work sessions, when sitting physically, or through electronic communication means pursuant to § 2.2-3708.2, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (a) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or (b) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a ‘meeting’ subject to the provisions of this chapter.”

⁴ Please see the Electronic Meetings Guide published by this office for details regarding electronic meetings.

Tips for Best Practice

- Consider the “consequence of choice”—If a public official or employee uses social media in the transaction of public business, the official or employee may be creating public records that are subject to public disclosure as well as record retention rules.
- Consider record retention of social media whenever possible to facilitate future FOIA requests.
- Avoid inadvertent meetings—If a form of social media allows multiple simultaneous users, then members of a public body using social media could unintentionally conduct a meeting by discussing public business if a sufficient number of other members also participate simultaneously.
- Avoid “meetings within a meeting”—Using social media and devices such as cell phones, members of a public body can be holding a public meeting while assembled together at a public place and, at the same time, be conducting a closed meeting through social media.⁵

Where do I go for more information?

Record retention. As mentioned previously, record retention is addressed under the Virginia Public Records Act and administered by the Library of Virginia. The Library’s website has a Records Management section (<http://www.lva.virginia.gov/agencies/records/>) that includes contact information, record retention schedules for both state agencies and localities, forms, publications, guidance documents, and other resources.

First Amendment; freedom of speech and public forum issues. It is the understanding of FOIA Council staff that litigation has been brought in multiple jurisdictions, including Virginia, on issues concerning the use of social media by various public officials and public bodies. In addition to the use of social media in the FOIA contexts discussed above, some other issues that have been raised include (1) whether a public official or public body must allow others to post on the official’s or public body’s social media account, (2) whether posts may be edited, hidden, or deleted based on content or by user, (3) whether restrictions may be placed on the use of profanity or insulting language, and (4) whether users may be blocked from accessing or posting. Because all of these issues fall outside of FOIA and therefore outside the statutory authority of the FOIA Council, FOIA Council staff recommends that public bodies and public officials discuss these types of issues with their own attorneys.

Contact Information for the Virginia Freedom of Information Advisory Council:

Pocahontas Building, 10th Floor
900 E. Main Street
Richmond, VA 23219

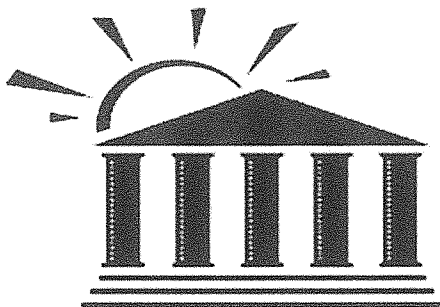
Telephone 804-698-1810
Toll-free 866-448-4100
Fax 804-698-1899

Email: foiacouncil@dls.virginia.gov

July 2019

⁵ Va. Code § 2.2-3701, “‘Closed meeting’ means a meeting from which the public is excluded.”

A Guide to the Freedom of Information Act for Boards of Visitors of Public Institutions of Higher Education



*Prepared by the Virginia Freedom of Information Advisory Council
in cooperation with the State Council of Higher Education for Virginia*

POLICY OF FOIA

By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.

Unless a public body or public official specifically elects to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

PUBLIC RECORDS

What is a public record?

All writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

All public records are open to the public UNLESS a specific exemption in law allows the record to be withheld.

What about retention of public records?

Public records **MUST** be retained according to retention schedules set by the Library of Virginia. The length of retention depends on the content of the record. After expiration of the applicable retention period, the records may be destroyed or discarded.

What about electronic mail?

Emails that relate to the public business are public records, regardless of whether you use your home or office computer, text or other forms of social media. It is the content of the record, not the equipment or account that is used, that controls.

Just like other public records, emails must be retained as required by the Virginia Public Records Act. For practical advice for email use, access and retention, see FOIA Council handout entitled "Email: Use, Access and Retention" available on the FOIA Council website.

PUBLIC MEETINGS

What is considered a meeting under FOIA for boards of visitors for public institutions of higher education?

Any gathering, including work sessions, of the constituent membership, sitting (or through telephonic or video equipment pursuant to §§ 2.2-3708.2 or 2.2-3708.3) as:

- the board, or
- an informal assemblage of
 - (i) as many as three members, or
 - (ii) a quorum, if less than three, of the constituent membership,

Wherever the gathering is held;

Regardless of whether minutes are taken or votes are cast.

NOTE: This requirement also applies to any meeting, including work sessions, of any subgroup of the board, regardless how subgroup is designated (i.e. committee, subcommittee, task force, workgroup, panel, etc.).

What is ***not*** a meeting?

- The gathering of employees; or
- The gathering or attendance of two or more board/council members at:
 - Any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business; or
 - A public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to discuss or transact public business.

MINUTES: Minutes are required for any meeting of the board/subgroup of the board.

VOTING: No secret or written ballots are ever allowed. Votes must be taken at a meeting conducted in accordance with FOIA.

POLLING: You may contact individual members separately (one-on-one) to ascertain their positions by phone, letter or email.

REMEMBER:

- Contacting members separately cannot be used in lieu of a meeting; and
- If you choose to use email to poll, you are creating a public record.

CLOSED MEETINGS: Allowed only as specifically authorized by FOIA or other law and require a motion stating the purpose, the subject *and* Code cite. [See § 2.2-3711 of FOIA for allowable purposes for closed meetings.]

E-MEETINGS: Are allowed for boards of visitors under heightened procedural and reporting requirements depending on the type of electronic meeting (i.e., meeting during a declared state of emergency, individual member(s) using remote participation, or an all-virtual public meeting). [See §§ 2.2-3708.2 and 2.2-3708.3 of FOIA.]

E-MAIL AND MEETINGS: The VA Supreme Court has held that e-mails may constitute a "meeting" under FOIA if there is simultaneous e-mail communication between three or more board members. Avoid "reply to all" as a general rule. See FOIA Council handout entitled "*Email and Meetings*" available on the FOIA Council website.

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Role of Board of Visitors of Virginia Public Institutions of Higher Learning

AG Op. ROLE OF BOARD OF VISITORS OF VIRGINIA PUBLIC INSTITUTION OF HIGHER LEARNING, 2023
Va. AG S-17 (23-052)

In fulfilling its responsibilities to the specific institution it serves, the primary duty of the board of visitors of each Virginia public institution of higher education is to the Commonwealth.

The Honorable Glenn Youngkin Governor of Virginia

October 2, 2023

ISSUE PRESENTED

You inquire regarding the role of the board of visitors of a Virginia public institution of higher learning. You more specifically ask whether Virginia law imposes upon such boards a duty to serve the interests of the university or college only, or the Commonwealth more broadly.

RESPONSE

It is my opinion that, in fulfilling its responsibilities to the specific institution it serves, the primary duty of the board of visitors of each Virginia institution of higher education is to the Commonwealth.

APPLICABLE LAW AND DISCUSSION

Virginia is home to some of the nation's finest public institutions of higher education. Those conferring bachelor's degrees are defined by statute.¹ As this Office previously has recognized, these institutions “are state agencies; they are statutory corporations created and empowered by acts of the General Assembly.”² Although they extend services to non-residents, Virginia's institutions of higher education exist to “fulfill[] the Commonwealth's commitment to provide education to the students of Virginia.”³

The General Assembly has vested the management of Virginia's colleges and universities in their respective boards of visitors.⁴ These boards constitute corporations, and in addition to possessing those powers generally affiliated with corporate status,⁵ the boards of visitors further enjoy broad statutory powers to regulate the academic and financial affairs of the institutions they serve.⁶

Although the General Assembly has conferred corporate powers upon the governing boards of the Commonwealth's institutions of higher education, each of Virginia's colleges and universities remains “a department of government”⁷ and has long-standing recognition as a *public* corporation.⁸ Moreover, each institution, and its respective governing board, “is part and parcel of the Commonwealth's higher education *system*,” as established by law in Title 23.1 of the *Code of Virginia*.⁹ In serving on the governing board of such a public corporation, each visitor “hold[s] under an act of the legislature a public office or employment[.]”¹⁰

One of the defining features of a public corporation, including an educational institution, is that its benefits are enjoyed by the public generally.¹¹ As traditionally understood, a public corporation is “created specially for public purposes as instruments or agencies to increase the efficiency of government, supply public wants, and promote the public welfare.”¹² Regardless of the specific mission of a particular public corporation, all such entities are “instituted by the Legislature, on the call of the people generally, for great public and *State* purposes[.]”¹³ Their “very essence is public use”¹⁴

The law recognizes that although a public corporation generally may benefit and thus “involve some private interests[,] strictly speaking, public corporations are such only as are founded by the government for public purposes, where the *whole interests* belong to the government.”¹⁵ Accordingly, “private individuals have no interest in or control over” any of Virginia's public colleges and universities.¹⁶ Because “the interest of the public constitutes [the] ends and aims” of each public institution of higher education,¹⁷ it is clear that the boards of visitors serving them, as public officers of the state, have a duty to the Commonwealth as a whole.¹⁸

That a board of visitors, through its service to a particular institution, ultimately serves the Commonwealth is reflected in how they otherwise are treated under law. Corporate status does not alter each institution's essential nature as a state agency that constitutes “an arm of the Commonwealth.”¹⁹ The operations of public corporations, including state universities and colleges, generally are cloaked with sovereign immunity and exempt from statutes of general applicability.²⁰ Legal services are provided by the Office of the Attorney General.²¹ The governing boards of public institutions of higher education are public bodies subject to the open records and open meetings requirements of the Virginia Freedom of Information Act.²² More specifically, although each institution is distinct, the General Assembly has charged each public institution of higher education with advancing particular overarching state goals, which are to be reflected in a statewide strategic plan developed by another state entity.²³

The duty of each board of visitors to the Commonwealth is further reflected in the oversight that the Commonwealth, especially through the General Assembly, maintains over the boards and the state institutions they serve. Virginia law expressly provides that each “board shall at all times be under the control of the General Assembly.”²⁴ Board composition is defined by statute,²⁵ and members are subject to removal by the Governor.²⁶ As this Office previously has explained, “the broad authority of Virginia colleges and universities does not supersede statutory or case law, public policy, or explicit statements of the General Assembly regarding specific topics.”²⁷ Nor does it negate the overall public nature of the institutions' aims.²⁸

In furtherance of the public purpose of these educational institutions and their boards, the General Assembly has enacted numerous transparency requirements that serve all Virginians. Each board must publish on its website its bylaws, its organizational makeup, meeting information, and contact information by which to “receive public communications.”²⁹ For each regular legislative session, the board of visitors must prepare and “make publicly available on the institution's website an annual executive summary of its interim activity.”³⁰ Retention rates, graduation rates, and post-graduation employment data must be posted on the institution's website.³¹

As it is the “public policy of the Commonwealth” that public institutions of higher education be funded by state appropriations,³² other statutory provisions relate to financial accountability to the public at large. Every institution must publish public reports regarding the institution's budget, tuition increases, and student fees.³³ The institutions must keep records pertaining to the state property it oversees, its transactions related to intellectual property, and its administration of funds associated with athletic programs.³⁴ To allow for additional oversight, each board must publish annually its financial statements and report the value of and cash earnings on its investments.³⁵ Boards also must report “the salary by position of any executive officer of such institution that exceeds for the previous fiscal year the salary limit for the chief executive officer for such institution set forth in the general appropriation act.”³⁶ In addition, individual board members can be held personally liable for the incurrence of unauthorized spending deficits.³⁷

In light of the foregoing context, it is evident that a board of visitors simply serves as the vehicle by which the General Assembly has chosen to exercise the Commonwealth's control over its colleges and universities.³⁸ In choosing to create boards of visitors to execute its governmental function of providing higher education to Virginia students, the Commonwealth imposes a primary duty to the Commonwealth on such public corporations in fulfilling their responsibilities to the institutions they serve.³⁹ The General Assembly has made this duty clear: in requiring board members to participate in regular educational programs “designed to address the role, duties, and responsibilities of the governing boards[.]” the General Assembly explicitly has directed that such programs “include presentations relating to[] **I. Board members' primary duty to the citizens of the Commonwealth**[.]”⁴⁰ Consequently, “the[ir] separate corporate status notwithstanding,” boards of visitors do not exist for their own sake or that of any particular institution but for “the benefit of the public at large.”⁴¹

CONCLUSION

Accordingly, it is my opinion that the primary duty of the board of visitors of each Virginia public institution of higher education is to the Commonwealth.

FOOTNOTES

¹ These institutions include Christopher Newport University (CNU), George Mason University (GMU), James Madison University (JMU), Longwood University (Longwood), the University of Mary Washington (UMW), Norfolk State University (NSU), Old Dominion University (ODU), Radford University (Radford), the University of Virginia (UVA), the University of Virginia's College at Wise as a division of the University of Virginia, Virginia Commonwealth University (VCU), Virginia Military Institute (VMI), Virginia Polytechnic Institute and State University (Virginia Tech),

Virginia State University (VSU), and The College of William and Mary in Virginia (William & Mary). VA. CODE ANN. § 23.1-100 (2021).

² 2006 Va. AG 5, 2006 Op. Va. Att'y Gen. 5, 6 n.2; *accord* 2007 Va. AG 95, 2007 Op. Va. Att'y Gen. 95, 96 n.6.

³ 2007 Op. Va. Att'y Gen. at 96. *See also* 81-82 Va. AG 66, 1981-82 Op. Va. Att'y Gen. 66, 67 (“These institutions exist for the singular purpose of providing higher education opportunities to the people of Virginia.”).

⁴ For specific baccalaureate institutions, *see* §§ 23.1-1400 (2021) (CNU); 23.1-1500 (2021) (GMU); 23.1-1600 (2021) (JMU); 23.1-1700 (2021) (Longwood); 23.1-1800 (2021) (UMW); 23.1-1900 (2021) (NSU); 23.1-2000 (2021) (ODU); 23.1-2100 (2021) (Radford); 23.1-2200 (2021) (UVA); 23.1-2300 (2021) (VCU); 23.1-2500 (2021) (VMI); 23.1-2600 (2021) (Virginia Tech); 23.1-2700(2021) (VSU); 23.1-2800 (2021) (William & Mary).

⁵ *See* Code sections cited in note 4 *supra*. These enabling statutes nonetheless further provide that such powers do not include “those powers that are confined to corporations created pursuant to Title 13.1 [;]” accordingly, although boards of visitors constitute corporations, they are legally distinct from corporations created pursuant to Title 13.1.

⁶ Sections 23.1-1301 (Supp. 2023); 23.1-2209 (2021). A state college or university, “through its board of visitors, ‘has not only the powers expressly conferred upon it, but it also has the implied power to do whatever is reasonably necessary to effectuate the powers expressly granted.’” 2008 Va. AG 90, 2008 Op. Va. Att'y Gen. 90, 90 (some quotation marks omitted) (quoting *Goodreau v. Rector & Visitors*, 116 F. Supp. 2d 694, 703 (W.D. Va. 2000)).

⁷ *Batcheller v. Commonwealth ex rel. Rector & Visitors of Univ. of Va.*, 176 Va. 109, 123 (1940).

⁸ *Phillips v. Rector & Visitors of Univ. of Va.*, 97 Va. 472, 475 (1899). *See also Fae. for Responsible Change v. The Visitors of James Madison Univ.*, 26 Cir. 15351, 38 Va. Cir. 159, 160 (Rockingham Cnty. Cir. Ct. Oct. 5, 1995); 1981-82 Op. Va. Att'y Gen. at 67 (concluding that “the several public institutions of higher education in the Commonwealth of Virginia are public corporations”).

⁹ *Fae. for Responsible Change*, 26 Cir. 15351, 38 Va. Cir. at 165 (emphasis added).

¹⁰ *Lewis v. Whittle*, 77 Va. 415, 419 (1883).

¹¹ *See Bd. of Tr. of Vincennes Univ. v. Indiana*, 55 U.S. 268, 277 (1852) (emphasis added) (explaining that a public purpose is a necessary, yet insufficient, condition of having public corporation status).

¹² *Bliss v. Pathfinder Irr. Dist.*, 240 N.W. 291, 292 (Neb. 1932) (quoting 43 C.J. 72).

¹³ *Stribbling v. Bank of the Valley*, 26 Va. 132, 170 (1827) (emphasis added). They “have no inherent jurisdiction[.]” *Town of Danville v. Shelton*, 76 Va. 325, 327 (1882) (quoting *Quid & Carrington v. City of Richmond*, 64 Va. (23 Gratt.) 464, 467 (1873)).

¹⁴ *Jones v. Commonwealth*, 267 Va. 218, 223 (2004) (finding state universities to be “governmental entities” for purposes of applying the Virginia Workers' Compensation Act).

¹⁵ *Vincennes Univ.*, 55 U.S. at 276 (quoting *Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 668-69 (1819)); *accord Lewis*, 77 Va. at 419 (“Strictly speaking, public corporations are such only as are founded by the government for public purposes — where the whole interest belong also to the [Commonwealth].”); *Khoury v. Cmty. Mem'l Hosp., Inc.*, 203 Va. 236, 244 (1962). With respect to “[a] public corporation, instituted for purposes connected with the administration of the government, . . . there is, in reality, but one party, and the trustees or governors of the corporation are merely trustees for the public.” *City of Covington v. Kentucky*, 173 U.S. 231, 242 (1899) (quoting 2 KENT'S COMM. at 306 (12th ed.)).

¹⁶ *Phillips*, 97 Va. at 475. The Supreme Court of Tennessee offers the following description:

Private corporations are those created for the immediate benefit and advantage of the individuals constituting them, and the franchises conferred are to be exercised for their advantage. The corporation stands to them in the relation of trustee holding the property owned by it for, and dividing the profits arising from its management and the employment of its

franchises for, these individuals as *cestuis que trust*. Upon the other hand, public corporations are created for public purposes, and the property controlled by them is devoted to the objects for which they are created. The corporators have no private beneficial interest either in the franchises granted or the property controlled. The only private right which an individual can have in such a corporation is the right of being and acting as a corporator. So far as the property of the corporation is concerned, the interest which the corporators have as individuals is that common interest which all citizens have in property belonging to the State. Nor is the character of this interest affected by the source from which the property comes. A purchase by or a gift of property to the corporation is in reality a purchase by or a gift to the public, and is to be administered by the corporation as an agency of the State.

Trs. of Carrick Acad. v. Clark, 80 S.W. 64, 67 (Tenn. 1903).

¹⁷ *Phillips*, 97 Va. at 476.

¹⁸ In holding public office, this duty falls upon each member of the board individually. *See Frazier v. Va. Mil. Inst.*, 81 Va. 59, 61 (1885) (“A corporation is an inanimate, artificial being, having no power to act except through living agents. ‘It cannot write, and therefore it can record nothing except through its agents, who act for it and express its will. Usually this is done by a body called the board of directors.’ [Here,] the legislature has seen fit to invest a body of [persons] called, ‘The Board of Visitors,’ with the control of the affairs of this institution, and have authorized them to act for it.”).

¹⁹ *See, e.g., Jacobs v. Coll. of William & Mary*, 495 F. Supp. 183, 190 (E.D. Va. 1980), *aff’d*, 661 F.2d 922 (4th Cir. 1981) (concluding that William & Mary constitutes an “arm of the state”); *Haley v. Va. Commonwealth Univ.*, 948 F. Supp. 573, 583 (E.D. Va. 1996) (highlighting that “VCU is an arm of the Commonwealth of Virginia”). *See also* 2007 Op. Va. Att’y Gen. at 96 (explaining that “colleges and universities are state agencies, *i.e.* arms of the Commonwealth”).

²⁰ *See Cuccinelli v. Rector & Visitors of Univ. of Va.*, 283 Va. 420, 427 (2012).

²¹ VA. CODE ANN. § 2.2-507(A) (2022).

²² *See* §§ 2.2-3701 (2022); 2.2-3704 (Supp. 2023); 2.2-3707 (Supp. 2023).

²³ *See* §§ 23.1-203 (Supp. 2023); 23.1-1002 (2021). Notably, this entity, the State Council of Higher Education for Virginia (SCHEY), was created “to promote the development and operation of [a] . . . coordinated system of higher education in the Commonwealth.” Section 23.1-200(A) (2021). Public colleges and universities must submit proposed changes to their mission statements and new academic programs to the Council for approval. Section 23.1-203.

²⁴ *See* Code sections cited in note 4 *supra*.

²⁵ Sections 23.1-1300 (2021) (governing boards generally); 23.1-1401 (2021) (CNU); 23.1-1501 (2021) (GMU); 23.1-1601 (2021) (JMU); 23.1-1701 (2021) (Longwood); 23.1-1801 (2021) (UMW); 23.1-1901 (2021) (NSU); 23.1-2001 (Supp. 2023) (ODU); 23.1-2101 (2021) (Radford); 23.1-2201 (2021) (UVA); 23.1-2303 (2021) (VCU); 23.1-2501 (Supp. 2023) (VMI); 23.1-2601 (2021) (Virginia Tech); 23.1-2701 (2021) (VSU); 23.1-2801 (2021) (William & Mary).

²⁶ Section 23.1-1300.

²⁷ 2007 Op. Va. Att’y Gen. at 96; *accord* 2008 Op. Va. Att’y Gen. at 90.

²⁸ *Phillips*, 97 Va. at 476.

²⁹ Section 23.1-1303(B)(1) & (2) (Supp. 2023).

³⁰ Section 23.1-1303(B)(13).

³¹ Section 23.1-409 (Supp. 2023).

³² Section 23.1-101 (2021) (providing that, although the institutions are to be “encouraged in their attempts to increase their endowment funds and unrestricted gifts from private sources[,]” the availability of such private funds “shall neither be taken into consideration in nor used to reduce state appropriations”).

³³ Section 23.1-409.

³⁴ Section 23.1-102 (2021).

³⁵ Section 23.1-1303(B)(11) & (12).

³⁶ Section 23.1-102.1 (2021).

³⁷ See 2022 Va. Acts ch. 2, Item 4-3.01(b) (Spec. Sess. I); *accord* 2023 Va. Acts ch. 1, Item 4-3.01(b) (Spec. Sess. I).

³⁸ *Phillips*, 97 Va. at 475 (“[UVA], from its foundation, has been wholly governed, managed, and controlled by the State through a corporation created for the purpose, under the style and title of ‘The Rector and Visitors of [UVA].’”). As public corporations, the existence of these boards of visitors is wholly dependent on the will of the Commonwealth. See *Wade v. City of Richmond*, 59 Va. 583, 587 (1868) (“Public corporations created and existing only by law, may be changed, and, if purely public, even destroyed by law.”).

³⁹ *Cf. Biden v. Nebraska*, 600 U.S. ___, 22506, ___, 143 S. Ct. 2355, 2367-68 (holding that a State's choice to exercise its authority and carry out its responsibilities through a public corporation it created and controls does not affect the State's rights to protect its interests).

⁴⁰ Section 23.1-1304 (2021) (emphasis added).

⁴¹ 1981-82 Op. Va. Att'y Gen. at 66 & 67.

**2017 OFFICIAL OPINION
OF
THE OFFICE OF THE
ATTORNEY GENERAL
HIGHLIGHTING
VCUHSA
GOVERNANCE AND
OVERLAP
VCU**

INSTITUTIONS OF HIGHER EDUCATION; OTHER EDUCATIONAL AND CULTURAL INSTITUTIONS:
VIRGINIA COMMONWEALTH UNIVERSITY HEALTH SYSTEM AUTHORITY

The Supreme Court of Virginia likely would find, in light of the functions and history of the Virginia Commonwealth University Health System Authority (“VCUHSA”), that it is a State agency or arm of the Commonwealth for the purposes of sovereign immunity, and therefore is entitled to absolute immunity from suit. Even if the Court were not to agree, however, VCUHSA also satisfies the criteria of a quasi-municipal corporation and therefore would be entitled to immunity for governmental functions.

The Virginia Tort Claims Act exposes the Commonwealth, but not VCUHSA, to limited liability for the negligent acts of its employees.

The Honorable James P. “Jimmie” Massie III Member, Virginia House of Delegates

December 7, 2017

ISSUE PRESENTED

You have asked whether the Virginia Commonwealth University Health System Authority (the “Authority” or “VCUHSA”) has absolute or qualified immunity from lawsuits that may be brought against it. You also have asked whether the amount of any recovery against VCUHSA for damages, loss of property, or personal injury or death caused by a negligent or wrongful act or omission of its employees is limited to \$100,000 in accordance with § 8.01-195.3 of the *Code of Virginia*.

BACKGROUND

1. History

The origins of the health system now known as VCUHSA date to 1838, and for all but a few years of its history it has served the Commonwealth as a public entity.¹ In 1854, the General Assembly granted an independent charter to [Page 238] the “Medical College of Virginia” (“MCV”), and six years later, MCV transferred its assets to the Commonwealth in return for an appropriation of \$30,000.² Beginning in 1861, MCV opened and operated a series of hospitals and outpatient clinics.³ In 1968, the General Assembly merged MCV with the Richmond Professional Institute to form Virginia Commonwealth University (“VCU” or “the University”).⁴

In 1996, the General Assembly enacted, and Governor Allen signed, legislation establishing the Medical College of Virginia Hospitals Authority (“MCVHA”).⁵ Pursuant to that legislation, MCVHA was “created as a public body corporate and as a political subdivision of the Commonwealth” and was “constituted [as] a public instrumentality, exercising public and essential governmental functions.”⁶ The General Assembly established a deadline of June 30, 1997 “for the transfer of employees to the Authority and for the transfer of hospital facilities, or any parts thereof, to and the assumption, directly or indirectly, of hospital obligations by the Authority.”⁷

In 2000, the name of the authority was changed from MCVHA to “Virginia Commonwealth University Health System Authority.”⁸ Under its current governing statute, recently recodified in Title 23.1,⁹ VCUHSA remains “a public body corporate, public instrumentality, and political subdivision of the Commonwealth with such public and corporate powers as are set forth in [Code §§ 23.1-2400 through 23.1-2428].”¹⁰ [Page 239]

2. Governance and Leadership

VCUHSA is governed by a 21-member board of directors (the “Board”), consisting of 19 appointed members and two ex officio members: the President of VCU, and VCU’s Vice President for Health Sciences.¹¹ The rector of VCU appoints five nonlegislative Board members from the VCU Board of Visitors; the Governor appoints six nonlegislative members; the Speaker of the House appoints five Board members; and the Senate Committee on Rules appoints three.¹² Five members of the Board must be physicians who are VCU faculty members with hospital privileges; they are among those appointed by the Governor and General Assembly — two by the Governor, two by the Speaker, and one by the Senate Committee on Rules — “after consideration of names from lists submitted by the faculty physicians of the School of

Medicine of the University through the Vice-President for Health Sciences of the University.”¹³ The President of VCU serves as chair of the Board.¹⁴

VCUHSA is “under the immediate supervision and direction of a chief executive officer” who is defined as “the individual who holds the title of Vice-President for Health Sciences” at VCU.¹⁵ The selection and removal of the CEO of VCUHSA is “made jointly” by the Board and the VCU Board of Visitors.¹⁶ In the event that a majority of both boards do not agree on the selection, removal, or conditions of employment of a CEO, and representatives of the boards cannot resolve the disagreement, then the President of VCU “shall decide upon the matter.”¹⁷

3. *Purposes*

You correctly relay that, under § 23.1-2401(B) of the *Code of Virginia*, the purpose of VCUHSA is “to exercise public and essential governmental functions” — specifically, **[Page 240]**

to provide for the health, welfare, convenience, knowledge, benefit, and prosperity of the residents of the Commonwealth and such other individuals who might be served by the Authority by delivering and supporting the delivery of medical care and related services to such residents and individuals, providing educational opportunities in the medical field and related disciplines, conducting and facilitating research in the medical field and related disciplines, and enhancing the delivery of health care and related services to the Commonwealth's indigent population.^[18]

The General Assembly has further enumerated six purposes of VCUHSA, authorizing it to “perform such public and essential government functions with the power and purpose” to:

1. Provide health care, including indigent care, to protect and promote the health and welfare of the citizens of the Commonwealth;
2. Serve as a high-quality teaching hospital to provide and promote health care by educating medical and health sciences professionals, providing medical services not widely available in the Commonwealth, and treating patients of the type and on the scale necessary to facilitate medical research and attract physicians, faculty members, researchers, and other individuals necessary to maintain quality medical and health sciences education;
3. Facilitate and support the health education, research, and public service activities of the Health Sciences Schools of the University;
4. Serve as the principal teaching and training hospital for undergraduate and graduate students of the Health Sciences Schools of the University;
5. Provide a site for faculty members of the Health Sciences **[Page 241]** Schools of the University to conduct medical and biomedical research; and
6. Operate and manage general hospital and other health care facilities, engaging in specialized management and operational practices to remain economically viable, earning revenues necessary for operations, and participating in arrangements with public and private entities and other activities, taking into account changes that have occurred or may occur in the future in the provision of health care and related services.^[19]

The General Assembly also required that the “Authority shall operate, maintain, and expand, as appropriate, teaching hospitals and related facilities for the benefit of the Commonwealth and its citizens and such other individuals who might be served by the Authority.”²⁰

4. *Powers*

The Authority has been given “all the powers necessary or convenient to carry out the purposes and provisions of” its enabling chapter.²¹ The *Code of Virginia* also expressly grants VCUHSA more than two dozen specific powers, including the power to:

- “[s]ue and be sued in its own name”;²²

- “[m]ake and execute contracts, guarantees, or any other instruments and agreements necessary or convenient for the exercise of its powers and functions, including contracts with hospitals or health care businesses to [Page 242] operate and manage any or all of the hospital facilities or operations”;²³
- “[c]onduct or engage in any lawful business, activity, effort, or project consistent with the Authority’s purposes or necessary or convenient to exercise its powers”;²⁴
- exercise all powers granted to corporations not inconsistent with the enabling chapter;²⁵
- borrow money and issue bonds;²⁶
- seek financing from and enter into contracts with the Commonwealth, the Virginia Public Building Authority, and the Virginia College Building Authority;²⁷
- procure insurance or provide self-insurance;²⁸
- accept loans, grants, contributions, or other assistance from all sources, including the federal government and the Commonwealth;²⁹ [Page 243]
- “[e]xercise the power of eminent domain . . . to acquire by condemnation any real property . . . that it may deem necessary to carry out the purposes of this chapter” when it concludes that acquisition is “in the public interest and necessary for public use” and is approved by the Governor;³⁰
- “[a]dminister programs to assist in the delivery of medical and related services to the citizens of the Commonwealth and others”;³¹ and
- “[e]xercise independently the powers conferred . . . in furtherance of its corporate and public purposes.”³²

The General Assembly concluded its recitation of the Authority’s powers by underscoring the “governmental” nature of its work for the Commonwealth and its residents:

The exercise of the powers permitted by this chapter shall be deemed the performance of essential governmental functions and matters of public necessity for the entire Commonwealth in the provision of health care, medical and health sciences education, and research for which public moneys may be borrowed, loaned, spent, or otherwise utilized and private property may be utilized or acquired.^[33]

APPLICABLE LAW AND DISCUSSION

I respond to each of your questions in the corresponding sections below. [Page 244]

1. *Whether VCUHSA has absolute or qualified immunity from suit.*

You ask for confirmation that, “as an agency of the Commonwealth of Virginia,” VCUHSA “itself has absolute or qualified immunity.” The Supreme Court of Virginia has not had occasion to address either whether VCUHSA is “an agency of the Commonwealth” or whether it is entitled to absolute or qualified immunity. While I note that the Secretary of the Commonwealth categorizes VCUHSA as an “independent agency” for the purposes of the organization of state government,³⁴ it is not necessary to decide whether, in all circumstances, VCUHSA should be treated as an agency. The Attorney General has previously opined that an authority may be considered an agency for some purposes but not others.³⁵

Thus, in responding to your request, it is sufficient to conclude — which I do, for the reasons set forth below — that the Supreme Court of Virginia would likely hold that VCUHSA is an arm of the Commonwealth for purposes of sovereign immunity. Accordingly, it would have absolute immunity from suit. But even if the Supreme Court were to conclude that VCUHSA is not entitled to absolute immunity, it would be entitled to qualified immunity when performing governmental functions. [Page 245]

a. *The Supreme Court of Virginia would likely find that VCUHSA is entitled to absolute immunity.*

“[T]he doctrine of sovereign immunity is ‘alive and well’ in Virginia.”³⁶ “Sovereign immunity is ‘a rule of social policy, which protects the state from burdensome interference with the performance of its governmental functions and preserves its control over state funds, property, and instrumentalities.’”³⁷ “Most importantly, the doctrine of sovereign immunity provides for ‘smooth operation of government’ and prevents ‘citizens from improperly influencing the conduct of governmental affairs through the threat or use of vexatious litigation.’”³⁸

In determining whether a particular governmental entity is entitled to absolute immunity, the relevant question is whether the entity is properly considered an arm of the Commonwealth.³⁹ The Supreme Court has “consistently reaffirmed that whether an entity is an arm or agency of the State, and therefore entitled to absolute immunity, depends on the nature of the entity.”⁴⁰ As the Court explained in *Prendergast v. Northern Virginia Regional Park Authority*,⁴¹ the “correct approach is the one we have long employed in the Commonwealth: the attributes of the particular entity which seeks immunity must be examined to determine whether it is an ‘arm’ of the Commonwealth.”⁴²

Consistent with that approach, when determining the legal status of entities, previous Attorneys General have looked to the particular context and **[Page 246]** factual circumstances.⁴³ They have not relied exclusively on whether an enabling statute identifies an entity as a “political subdivision.”⁴⁴ Instead, they have “distinguished state agencies from independent political subdivisions by reviewing factors that assess the entity’s reliance on the state for control and funding.”⁴⁵

[A] state agency is an entity that serves as a subordinate or auxiliary body to fulfill a state purpose, is dependent upon state appropriations, and is subject to state control to a great degree. For example, the exercise of powers of an agency is subject to prior approval or postexercise veto by a higher authority of state government.^[46]

By contrast, a political subdivision:

is independent from other governmental bodies, in that it may act to exercise those powers conferred upon it by law without seeking the approval of a superior authority. It employs its own consultants, attorneys, accountants and other employees whose salaries are fixed by the political subdivision and it often incurs debts which are not debts of the Commonwealth but are debts of the political subdivision.^[47]

There is no doubt that VCUHSA’s enabling statute confers on it a measure of independence as well as specific powers that are characteristic of political **[Page 247]** subdivisions.⁴⁸ But based on the factors identified by previous Attorneys General — and in light of VCUHSA’s unique history, status, and interconnectedness with VCU — it is my opinion that the Supreme Court of Virginia would likely find that VCUHSA is, like VCU itself, an arm of the Commonwealth entitled to absolute immunity.

First, VCUHSA, which was created by the General Assembly, remains subject to a substantial degree of State control.⁴⁹ Every member of VCUHSA’s governing board is either a State official or employee or has been appointed by one. The majority of the Board — 12 of 21 members — serve because of their positions at VCU as faculty, officials, or members of the Board of Visitors.⁵⁰

- five Board members must be physician-faculty members at VCU, chosen by the Governor and the General Assembly members after considering lists submitted by physician faculty of the VCU School of Medicine;
- five Board members are appointed by the rector of VCU from the VCU board of visitors (who themselves have been appointed by the Governor⁵¹); and
- two Board members, who are ex officio voting members, are senior officials at VCU: the President of VCU, and **[Page 248]** the chief academic and administrative officer for VCU’s Health Sciences School.⁵²

VCU’s significant representation on the Board has been amplified in recent years by the General Assembly, which in 2014 inserted a statutory requirement that the VCU president serve as the Board’s chair;⁵³ previously, the Board elected the chair.⁵⁴

Elected State officials also dictate the Board’s composition. Fourteen members of the Board — including the five VCU physician faculty — are appointed by the Governor, the Speaker of the House of Delegates, or the Senate Committee on Rules. Although the eight Board members appointed by the Speaker of the House and the Senate Committee on Rules need not be members of the General Assembly themselves, currently three are.⁵⁵

Not only does the Board's composition ensure State control over VCUHSA, so does the management structure, which commits oversight of VCUHSA's operations to a State employee. Under the *Code of Virginia*, the “Authority shall be under the immediate supervision and direction of a chief executive officer, [who] . . . shall be the individual who holds the title of Vice-President for Health Sciences” at VCU.⁵⁶ Decisions about the CEO's appointment or removal are made jointly by the VCU and VCUHSA boards, but if there is a disagreement between those boards that cannot be resolved, the President of VCU makes the final decision.⁵⁷

Thus, both through operational oversight and Board appointments, the State maintains control over VCUHSA. This has led at least one court to **[Page 249]** conclude that VCUHSA is immune from suit. In *Stewart v. Virginia Commonwealth University*,⁵⁸ an employment discrimination suit, the U.S. District Court for the Eastern District of Virginia concluded that VCU, as well as “its health system [and] medical center . . . are agencies of the Commonwealth of Virginia, arms of the State, and consequently entitled to sovereign immunity from suit”⁵⁹ In arriving at that conclusion, the court reasoned that, under the *Code of Virginia*, VCU is “under the control of the General Assembly,” and that the General Assembly “specifically empower[ed] VCU to operate a medical center . . . , a school of medicine . . . , and [VCUHSA].”⁶⁰

The level of State control distinguishes VCUHSA from other entities that the Supreme Court of Virginia has found not to be immune from suit.⁶¹ For instance, in *Virginia Electric & Power Company v. Hampton Redevelopment & Housing Authority*,⁶² the Supreme Court of Virginia concluded that a municipal housing authority, despite being denominated a political subdivision of the Commonwealth, “is not entitled to the same immunity from tort liability that is enjoyed by the Commonwealth” because it “is an entity purely local in nature.”⁶³ The authority “does not come into existence by state initiative; local activation, optional with each locality, is required.”⁶⁴ Similarly, in *Prendergast*, the Supreme Court of Virginia held that the authority was not an “arm of the Commonwealth” because it “was not directly created by the Commonwealth” **[Page 250]** and “is a creature of one or more localities and is essentially subject to their control.”⁶⁵ And in *Baird v. Stokes*,⁶⁶ a case involving the Eastern Virginia Medical School (“EVMS”), the Supreme Court found no error in a decision by the Circuit Court of the City of Norfolk that EVMS was not an agency of the Commonwealth in part because its governing board, at that time consisting mostly of appointees by local city councils, “maintained control over EVMS in the selection of leadership, as well as the adoption of rules and regulations.”⁶⁷ “EVMS was thus subject to substantial local control and functioned independently of the Commonwealth.”⁶⁸

Second, although I understand that VCUSHA no longer has an “agency code” assigned by the Commonwealth's Department of Planning and Budget, it is clear that VCUHSA remains dependent on significant financial support from the State.⁶⁹ In the 2016-2018 biennial budget, for instance, the appropriations for the Department of Medical Assistance Services included approximately \$150 million per year from general and non-general funds “to reimburse the Virginia Commonwealth University Health System for indigent health care costs.”⁷⁰ As the Joint Legislative Audit & Review Commission has explained, the General Assembly's annual appropriation is unique to VCU Health System and the University of Virginia (“UVA”) Medical Center, “the State's two academic health centers”:

Virginia's Medicaid program provides VCU Health System and UVA Medical Center with additional funding to recognize **[Page 251]** the important role that these facilities play in providing a health care safety net for Medicaid and uninsured patients in the State, as well as the public interest in ensuring the financial viability of these centers. The State's academic health centers have been reimbursed for well above their Medicaid costs almost every year over the past decade as a result of the additional funding received, which is designed not only to help offset their Medicaid losses but also to offset the uncompensated care they provide to uninsured patients.

VCU Health System and UVA Medical Center have received 84 percent of the \$3 billion over the past 10 years for two primary reasons. As the State's two academic health centers, they treat a higher percentage of Medicaid patients (26 percent and 20 percent, respectively) compared to other hospitals (14 percent). They also treat a high volume of indigent patients. In FY 2012, the General Assembly appropriated approximately \$237 million in supplemental payments to these two hospitals as compensation for the provision of indigent care.^[71]

In addition, the 2016-2018 budget includes a roughly \$26-million-per-year appropriation to VCU to fund positions at VCUHSA. An item denominated “State Health Services” (the same descriptive heading that covers appropriations to the UVA Medical Center in UVA's portion of the budget) provides that the “appropriation includes funding to support 200 instructional and administrative faculty positions and for administrative and classified positions which provide services, through internal service agreements, to the Virginia Commonwealth University Health System Authority.”⁷²

The General Assembly also has appropriated money to fund VCUHSA building projects. In 2012, in the VCU portion of the budget (also under “State **[Page 252]** Health Services”), a \$250,000 appropriation from the general fund was

“designated for the Virginia Commonwealth University Health System to plan for a replacement facility for the Virginia Treatment Center for Children.”⁷³ The funding for that facility came in 2013 when, as part of the Comprehensive Capital Outlay Program, the General Assembly authorized the issuance of over \$1 billion in bonds as well as \$56 million in higher-education-operating funds for a number of capital projects, including for a “Replacement Facility for the Virginia Treatment Center for Children” at VCU.⁷⁴

The General Assembly also controls VCUHSA's ability to make large capital expenditures. Under § 23.1-2413 of the *Code of Virginia*, any capital project in excess of \$5 million that is approved by the Board must be proposed to the House Appropriations and Senate Finance Committees with information about its “scope, cost, and construction schedule.”⁷⁵ VCUHSA “may undertake the project unless either Committee raises objections within 30 days of the notification, in which case the Authority shall not undertake the project until such objections are resolved.”⁷⁶

Third, the unique history of VCUHSA and its ongoing symbiotic relationship with VCU, which itself enjoys absolute immunity,⁷⁷ weigh significantly in favor of concluding that VCUHSA is also entitled to absolute immunity. To be sure, the General Assembly has defined VCUHSA separately in the *Code* — albeit under the same subtitle of Title 23.1 dealing with “[Public] [Page 253] Institutions of Higher Education”⁷⁸ — and conferred on VCUHSA a greater measure of independence from VCU than it previously enjoyed. But the continuing interconnectedness of VCU and VCUHSA make it difficult to conclude that they should be treated differently for purposes of sovereign immunity. In addition to sharing leadership, VCU and VCUHSA jointly employ a number of employees,⁷⁹ collaborate on initiatives and projects such as the Virginia Treatment Center for Children, and share a stake in the success of VCUHSA.⁸⁰ In these respects, VCUHSA resembles the UVA Medical Center, which is operated by UVA under the supervision of a board of university officials.⁸¹ In *Rector & Visitors of the University of Virginia v. Carter*,⁸² the [Page 254] Supreme Court of Virginia concluded that, as part of UVA, the UVA Health System was entitled to sovereign immunity.⁸³ Although, based on the *Code*, VCUHSA exercises its powers with greater independence than does UVA Medical Center, it would be incongruous for these two State teaching hospitals to be treated differently for purposes of sovereign immunity unless the General Assembly expressly intended that result.⁸⁴

VCUHSA's unique history and status call for careful adherence to the well-established principle that “[t]o the extent an entity is entitled to sovereign immunity, there must be clear legislative intent before such immunity may be waived.”⁸⁵ “A waiver of sovereign immunity will not be implied from general statutory language but must be explicitly and expressly stated in the statute.”⁸⁶ Although this principle is more often invoked to prevent a general statutory waiver such as the Virginia Tort Claims Act⁸⁷ from sweeping more broadly than the General Assembly intended — rather than in analyzing whether a particular entity's governing statute entitles it to immunity — I believe it applies here. In light of VCUHSA's features and functions, as well as its intertwined relationship with VCU, it would be appropriate to expect a clear and express [Page 255] legislative statement before finding that its immunity has been waived, rather than construing that result by implication.

VCUHSA's governing statute does provide that it may “[s]ue and be sued,”⁸⁸ but the Supreme Court has held that such language does not abrogate sovereign immunity.⁸⁹ Indeed, far from expressly waiving any immunity it has, VCUHSA's enabling statute expressly preserves it: Code § 23.1-2404 permits VCUHSA to procure insurance, but specifies that this “is not a waiver or relinquishment of any sovereign immunity to which the Authority or its officers, directors, employees, or agents are otherwise entitled.”⁹⁰

For these reasons, it is my opinion that the Supreme Court of Virginia would likely find that VCUHSA is entitled to absolute immunity. But that issue has not been conclusively settled. I am aware that the Circuit Court for the City of Richmond ruled last year that VCUHSA is not an arm of the Commonwealth for purposes of sovereign immunity.⁹¹ In my view, the court there did not sufficiently account for the factors discussed above. Recognizing that “[t]o determine if a political subdivision is an arm or extension of the state that enjoys absolute immunity, the court must consider factors that assess the entity's reliance on the Commonwealth for substantial control,” the court found that [Page 256] VCUHSA has at least “a few attributes of an ‘agency.’”⁹² But the court placed greater weight on the General Assembly's authorization of VCUHSA to “‘exercise independently the powers conferred on it.’”⁹³ And it distinguished *Rector & Visitors of the University of Virginia v. Carter* by reasoning that, “[u]nlike colleges and universities, VCUHSA is not subject to control by the Commonwealth The mere appointment of board members by the Governor or General Assembly does not constitute the control necessary to become an ‘agency’ or ‘arm’ of the Commonwealth.”⁹⁴ In my opinion, that formulation discounts the level of State control over VCUHSA, both at the Board level and in its daily operations, which approaches that of the UVA Medical Center.

I also am aware of other support for the proposition that VCUHSA should not be considered a State agency or arm of the Commonwealth in limited contexts other than the one at issue here. The text of VCUHSA's enabling chapter itself, for example, indicates that it should not be treated as an agency for all purposes: Code § 23.1-2410 authorizes the Auditor of Public Accounts to examine the accounts of VCUHSA, but it stipulates that “the Authority is not a state or governmental agency, advisory agency, public body or agency, or instrumentality *for purposes of Chapter 14 (§ 30-130 et seq.) of Title 30.*”⁹⁵ And in 2004, the Attorney General opined that VCUHSA was required to compensate the State Fire Marshal for inspecting its buildings because they are not state-owned.⁹⁶ The Attorney General reasoned that, because it is a “‘public body corporate’ and a ‘political subdivision of the Commonwealth,’ [VCUHSA] is neither a state agency nor a state institution *for the purpose of answering the question you pose.*”⁹⁷

Those points do not undermine my ultimate opinion that the Supreme Court likely would find VCUHSA to be an arm of the Commonwealth and therefore entitled to absolute immunity. At most, they confirm that, as stated above, an authority may be considered an agency or arm of the Commonwealth [Page 257] in some contexts but not in others.⁹⁸ More informative on the question of VCUHSA's immunity is the control that the Commonwealth retains over VCUHSA and its leadership, operations, and funding.

b. *VCUHSA is entitled to immunity for performing governmental functions.*

If VCUHSA is not an agency or arm of the Commonwealth entitled to absolute immunity, it is at least a quasi-municipal corporation, and therefore entitled to immunity for its governmental, as opposed to proprietary, functions.

“The shield of sovereign immunity does not just apply to the State”⁹⁹ Other entities enjoy immunity in certain circumstances. Among these are municipalities, municipal corporations, and the ill-defined category of “quasi-municipal corporations,” which the Supreme Court of Virginia has recognized as entities that are “not municipal corporations in the strict sense of the term” but that have been “created to perform an essentially public service.”¹⁰⁰ As the Supreme Court has summarized the rule, “municipal corporations perform two types of functions — governmental and proprietary. Municipal corporations are immune from liability ‘when performing governmental functions, but are not when exercising proprietary functions.’”¹⁰¹

The Supreme Court's analysis for determining whether an entity is a municipal corporation depends on six essential attributes of a municipal corporation:

(1) Creation as a body corporate and politic and as a political subdivision of the Commonwealth; (2) Creation to serve a public purpose; (3) Power to have a common seal, to sue and be sued, to enter into contracts, to acquire, hold and dispose of [Page 258] its revenue, personal and real property; (4) Possession of the power of eminent domain; (5) Power to borrow money and issue bonds which are tax exempt, with interest on such bonds enjoying the same status under tax laws as the interest on bonds of other political subdivisions of the state; (6) Management of the corporation vested in a board of directors or a commission.^[102]

Virginia courts and Attorneys General have found a number of entities to be municipal and quasi-municipal corporations based on these factors and the circumstances of each case.¹⁰³

Applying the six factors here points to the conclusion that VCUHSA is a quasi-municipal corporation, even assuming for argument's sake that it is not a State agency or arm of the Commonwealth.¹⁰⁴ First, VCUHSA was “established as a public body corporate, public instrumentality, and political subdivision of the Commonwealth.”¹⁰⁵ Second, as its governing statute repeatedly describes, VCUHSA was created to serve a public purpose, including “to provide for the health, welfare, convenience, knowledge, benefit, and prosperity of the residents of the Commonwealth.”¹⁰⁶ Third, VCUHSA has the power to have a seal, to sue [Page 259] and be sued, to enter into contracts, and to control its revenues and property.¹⁰⁷ Fourth, it has the power of eminent domain (although its exercise of that power is subject to gubernatorial approval).¹⁰⁸ Fifth, it has the power to borrow money and issue tax-exempt bonds.¹⁰⁹ Finally, as discussed at length above, VCUHSA's management is vested in a board, albeit one controlled by State officials.¹¹⁰

Thus, VCUHSA satisfies all six factors and therefore could qualify as a quasi-municipal corporation entitled to immunity in fulfilling governmental functions, even if it were not considered to be a State agency or arm of the Commonwealth.¹¹¹ I do not offer any opinion on the specific functions that would qualify for VCUHSA or its employees to be immune from suit. “Because no bright line rule exists to distinguish between governmental and proprietary functions, whether the exercise of any particular power . . . would be governmental or proprietary would turn on facts not presented.”¹¹²

But I note that the General Assembly has broadly defined the “governmental” nature of VCUHSA’s activities. In § 23.1-2401(B) of the *Code of Virginia*, it stated that the purpose of VCUHSA is:

to exercise public and essential governmental functions to provide for the health, welfare, convenience, knowledge, benefit, and prosperity of the residents of the Commonwealth . . . by delivering and supporting the delivery of medical care and related services to such residents and [Page 260] individuals, providing educational opportunities in the medical field and related disciplines, conducting and facilitating research in the medical field and related disciplines, and enhancing the delivery of health care and related services to the Commonwealth’s indigent population.[¹¹³]

Moreover, in § 23.1-2404(B), the General Assembly provided that the exercise of VCUHSA’s statutory powers “shall be deemed the performance of essential governmental functions and matters of public necessity for the entire Commonwealth in the provision of health care, medical and health sciences education, and research”¹¹⁴ The General Assembly also required that the “Authority shall operate, maintain, and expand, as appropriate, teaching hospitals and related facilities for the benefit of the Commonwealth and its citizens and such other individuals who might be served by the Authority.”¹¹⁵

Whether or not a particular VCUHSA employee shares in VCUHSA’s immunity remains, as the Supreme Court made clear last year in *Pike v. Hagaman*,¹¹⁶ a separate question determined by application of the test in *James v. Jane*.¹¹⁷ In *Pike* the Supreme Court applied *James* to conclude that a nurse employed by a VCUHSA hospital was entitled to sovereign immunity.¹¹⁸ Although VCUHSA’s immunity as a State entity was not an issue before the Supreme Court, because the plaintiff had conceded in the court below that VCUHSA itself “was indeed entitled to sovereign immunity,”¹¹⁹ the Court’s decision that the nurse was immune from suit underscores VCUHSA’s own immunity. Analyzing the second *James* factor — the State’s interest in the nurse’s function — the Court examined VCUHSA’s governing statute and held that, in providing the specialized health services offered by VCUHSA, the nurse [Page 261] was “serving an essential governmental function” and “carrying out the express interest of the Commonwealth.”¹²⁰ Analyzing the fourth *James* factor — the level of control by the State over an employee — the Court found that the nurse was subject to a high degree of State control because, among other things, the “state hospital pays her wages and determines her schedule and whether she can take leave. This fourth factor also points in the direction of sovereign immunity.”¹²¹

2. Whether recovery against VCUHSA for negligent acts of employees is limited to \$100,000.

You also have asked for confirmation that “the amount of any recovery against the VCU Health System Authority for damages, loss of property or personal injury or death caused by the negligent or wrongful act or omission of employees of VCU Health System Authority is limited to \$100,000 in accordance with V[irginia] Code § 8.01-195.3.” The Code section you cite is part of the Virginia Tort Claims Act (the “VTCA”), which is a limited waiver of the Commonwealth’s immunity and provides that:

the Commonwealth shall be liable for claims for money . . . on account of damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of his employment under circumstances where the Commonwealth or transportation district, if a private person, would be liable to the claimant for such damage, loss, injury or death. . . . The amount recoverable by any claimant shall not exceed . . . \$100,000 for causes of action accruing on or after July 1, 1993 or . . . the maximum limits of any liability policy maintained to insure against such negligence or other tort, if such policy is in force at the time of the act or omission complained of, whichever is greater, exclusive of interest and costs.[¹²²] [Page 262]

An “employee” is defined as “any officer, employee or agent of any agency, or any person acting on behalf of an agency in an official capacity,” while “agency” is broadly defined to include “any department, institution, authority, instrumentality, board or other administrative agency of the government of the Commonwealth”¹²³

While the VTCA exposes *the Commonwealth* to limited liability for the negligent acts of employees of State entities — including authorities — the VTCA does not expose entities such as VCUHSA to liability themselves. Thus, in *Rector & Visitors of the University of Virginia v. Carter*, the Supreme Court rejected an effort to hold UVA liable for the negligent acts of a resident physician in the UVA Health System. The Court explained:

Absent an express statutory or constitutional provision waiving sovereign immunity, the Commonwealth and its agencies are immune from liability for the tortious acts or omissions of their agents and employees. . . . The limited waiver provided for in the Act will be strictly construed because the Act is a statute in derogation of the common law. Under the

plain language of the Act, the Commonwealth (and certain “transportation districts” not here relevant) are the only entities for which sovereign immunity is waived. The Act contains no express provision waiving sovereign immunity for agencies of the Commonwealth, which we have stated repeatedly is a mandatory requirement before waiver occurs. As an agency of the Commonwealth, UVA is entitled to sovereign immunity under the common law absent an express constitutional or statutory provision to the contrary. There is no such waiver in the Act or elsewhere.^[124]

For the same reasons, VCUHSA may not be held liable under the VTCA for the negligent acts of its employees, whether it is considered an agency or an authority. And because the VTCA does not waive VCUHSA's immunity, it is not liable for any amount of damages, let alone up to the statutory cap of \$100,000 that would otherwise apply. **[Page 263]**

CONCLUSION

In response to your first question, it is my opinion that the Supreme Court of Virginia likely would find, in light of VCUHSA's functions and history, that it is a State agency or arm of the Commonwealth for the purposes of sovereign immunity, and therefore is entitled to absolute immunity from suit. Even if the Court were not to agree, however, VCUHSA also satisfies the criteria of a quasi-municipal corporation and therefore would be entitled to immunity for governmental functions. In answer to your second question, the VTCA exposes the Commonwealth, but not VCUHSA, to limited liability for the negligent acts of its employees.

FOOTNOTES

¹ See *VCU School of Medicine, History — Timeline*, VIRGINIA COMMONWEALTH UNIVERSITY, <http://www.medschool.vcu.edu/about/history/timeline/>* (last visited Dec. 5, 2017).

* [Editor's Note: The website address(es) which appear in this case are set out as hyperlinks for your own convenience. Due to the passage of time, however, the hyperlink may no longer work and/or the content of the website may not accurately reflect the content which existed at the time this case was decided.]

² *Id.*

³ See *id.*

⁴ 1968 Va. Acts ch. 93 (“The colleges, schools, and divisions heretofore existing as The Medical College of Virginia shall, as of July 1, 1968, be designated The Medical College of Virginia, Health Sciences Division of Virginia Commonwealth University.”).

⁵ 1996 Va. Acts ch. 905.

⁶ *Id.*

⁷ *Id.*

⁸ 2000 Va. Acts ch. 720.

⁹ See 2016 Va. Acts ch. 588.

¹⁰ VA. CODE ANN. § 23.1-2401 (2016).

¹¹ Section 23.1-2402(A) (2016).

¹² *Id.*

¹³ Section 23.1-2402(A) to (C).

¹⁴ Section 23.1-2402(G).

¹⁵ Section 23.1-2403(A) (2016).

¹⁶ *Id.*

¹⁷ Section 23.1-2403(B).

¹⁸ Section 23.1-2401(B).

¹⁹ *Id.*

²⁰ Section 23.1-2401(C).

²¹ Section 23.1-2404(A) (Supp. 2017).

²² Section 23.1-2404(A)(1).

²³ Section 23.1-2404(A)(5). The term “hospital facilities” is defined as “all property or rights in property, real and personal, tangible and intangible, including all facilities suitable for providing hospital and health care services . . . and other related and supporting facilities owned, leased, operated, or used, in whole or in part, by Virginia Commonwealth University as part of, or in connection with, MCV Hospitals in the normal course of its operations as a teaching, research, and medical treatment facility.” Section 23.1-2400 (2016).

²⁴ Section 23.1-2404(A)(6).

²⁵ Section 23.1-2404(A)(7).

²⁶ Section 23.1-2404(A)(9). *See also* § 23.1-2418 (2016) (setting forth in greater detail the Authority's power to issue bonds).

²⁷ Section 23.1-2404(A)(10), (11).

²⁸ Section 23.1-2404(A)(12). The provision indicates that the “purchase of insurance, participation in an insurance plan, or creation of a self-insurance plan by the Authority is not a waiver or relinquishment of any sovereign immunity to which the Authority or its officers, directors, employees, or agents are otherwise entitled.” *Id.*

²⁹ Section 23.1-2404(A)(15).

³⁰ Section 23.1-2404(A)(16).

³¹ Section 23.1-2404(A)(23).

³² Section 23.1-2404(A)(25).

³³ Section 23.1-2404(B).

³⁴ The Secretary's state government organizational chart identifies VCUHSA as an “independent agency,” along with the Virginia Retirement System (the “VRS”), the State Corporation Commission (the “SCC”), and the Virginia Lottery, among others. *See Secretary of the Commonwealth, Organization of Virginia State Government*, VIRGINIA.GOV, available at <http://commonwealth.virginia.gov/va-government/organization-of-virginia-state-government/> (last visited Dec. 5, 2017). Federal courts have agreed that the VRS and SCC are agencies of the State entitled to immunity. *See Sculthorpe v. Va. Ret. Sys.*, 952 F. Supp. 307, 309-10 (E.D. Va. 1997) (VRS “is an independent agency of the state. . . . [I]t is an ‘arm of the state’ entitled to immunity”); *Croatan Books, Inc. v. Commonwealth*, 574 F. Supp. 880, 885 (E.D. Va. 1983) (“Clearly, the State Corporation Commission has no life other than that derived from the State; rather the agency is the Commonwealth itself in its role as business regulator, not an entity independent of it.”).

³⁵ *See, e.g.*, 1985-1986 Op. Va. Att'y Gen. 150, 151, 152, 85-86 Va. AG 150, 151, 152, n.2 (soil and water conservation district defined in the Code as a “governmental subdivision” is a political subdivision but is an agency for purposes of sovereign immunity); 1976-1977 Op. Va. Att'y Gen. 319, 319, 76-77 Va. AG 319, 319 (Virginia Port Authority is a political subdivision but is an agency for purposes of statute governing appointment of its administrative head).

³⁶ *Gray v. Va. Sec'y of Transp.*, 276 Va. 93, 101, 62 S.E.2d 66 (2008) (quoting *Messina v. Burden*, 228 Va. 301, 307, 321 S.E.2d 657 (1984)).

³⁷ *City of Va. Beach v. Carmichael Dev. Co.*, 259 Va. 493, 499, 527 S.E.2d 778 (2000) (quoting *Hinchey v. Ogden*, 226 Va. 234, 240, 307 S.E.2d 891 (1983)).

³⁸ *Id.* (quoting *Messina*, 228 Va. at 308).

³⁹ *See Elizabeth River Crossings Op Co, LLC v. Meeks*, 286 Va. 286, 322, 749 S.E.2d 176 (2013) (using the phrase “‘arms’ of the Commonwealth” to describe “the Commonwealth and certain of its agencies, boards, and commissions”).

⁴⁰ *Jean Moreau & Assocs., Inc. v. Health Ctr. Comm'n ex rel. Cty. of Chesterfield*, 283 Va. 128, 141, 720 S.E.2d 105 (2012) (citing *Prendergast v. Northern Va. Reg'l Park Auth.*, 227 Va. 190, 194, 313 S.E.2d 399 (1984)).

⁴¹ 227 Va. 190, 313 S.E.2d 399 (1984).

⁴² *Id.* at 194.

⁴³ *See* 2002 Op. Va. Att'y Gen. 281, 283, 2002 Va. AG 281, 283 (“Depending on the context, . . . a political subdivision may be considered a state agency for limited purposes.”).

⁴⁴ *See, e.g.*, 1978-1979 Op. Va. Att'y Gen. 305, 308, 78-79 Va. AG 305, 308 (citation omitted) (“[T]he inquiry must go beyond the statutory provision under which the Authority was created and operated. The actual functioning of the Authority must be reviewed to determine factually whether the Authority is operated as an agency or a political subdivision of the State.”).

⁴⁵ 2002 Op. Va. Att'y Gen. 281, 282, 2002 Va. AG 281, 282 (citing 1985-1986 Op. Va. Att'y Gen. 336, 336, 85-86 Va. AG 336, 336; 1985-1986 Op. Va. Att'y Gen. 149, 150, 85-86 Va. AG 149, 150; 1979-1980 Op. Va. Att'y Gen. 5, 5, 79-80 Va. AG 5, 5; 1978-1979 Op. Va. Att'y Gen. 305, 307-09, 78-79 Va. AG 305, 307-09; 1977-1978 Op. Va. Att'y Gen. 454, 454, 77-78 Va. AG 454, 454).

⁴⁶ 2002 Op. Va. Att'y Gen. 281, 282, 2002 Va. AG 281, 282 (footnotes omitted).

⁴⁷ 1985-1986 Op. Va. Att'y Gen. 336, 336, 85-86 Va. AG 336, 336 (citations omitted).

⁴⁸ Section 23.1-2404(A)(25) (VCUHSA may “[e]xercise independently the powers conferred . . . in furtherance of its corporate and public purposes”). *See also infra* Part 1.b.

⁴⁹ The analysis herein regarding State control is offered in the limited context of assessing VCUHSA's entitlement to sovereign immunity and should not be construed as opining on the relationship between any State entities and employees for purposes of determining *respondeat superior* liability. *Cf. McDonald v. Hampton Training Sch. for Nurses*, 254 Va. 79, 82, 486 S.E.2d 299 n.1 (1997) (distinguishing between “the status of an individual for purposes of *respondeat superior*” and “whether a governmental employee is entitled to sovereign immunity”). Nor should this analysis be construed as opining that a principal-agent relationship exists between VCU and VCU Health System or between VCU and any individual acting in his or her capacity as a VCU Health System employee.

⁵⁰ *See* § 23.1-2402(A).

⁵¹ *See* § 23.1-2303 (2016).

⁵² Section 23.1-2402(A). The latter individual holds the title of Vice-President for Health Sciences at VCU and serves as the CEO of VCUHSA. *See* § 23.1-2403.

⁵³ Section 23.1-2402(G).

⁵⁴ *See* 2014 Va. Acts ch. 456.

⁵⁵ See *VCU Health System Authority Board of Directors (2017-2018 Members)*, VCU HEALTH (Delegate M. Kirkland Cox, Delegate James P. Massie III, and Senator Ryan T. McDougale), available at <http://www.vcuhealth.org/about-us/leadership/board-of-directors> (last visited Dec. 5, 2017).

⁵⁶ Section 23.1-2403(A).

⁵⁷ Section 23.1-2403(A), (B).

⁵⁸ No. 3:09CV738-HEH, 2010 WL 1170002 (E.D. Va. Mar. 23, 2010), *aff'd in part and vacated in part*, 414 F. App'x 555 (4th Cir. 2011) (per curiam).

⁵⁹ *Stewart*, 2010 WL 1170002, at *4. The U.S. Court of Appeals for the Fourth Circuit later vacated the district court's dismissal of Stewart's Title VII claim “against VCU and its allied medical facilities” in light of Supreme Court precedent that, “in enacting Title VII, Congress properly abrogated the states' Eleventh Amendment immunity for such [employment discrimination] suits.” *Stewart*, 414 F. App'x at 556.

⁶⁰ *Stewart*, 2010 WL 1170002, at *4.

⁶¹ See, e.g., *Baird v. Stokes*, 4 Cir. CL10227, 82 Va. Cir. 56, 58 (Va. Cir. Ct. (Norfolk) Apr. 5, 2011) (noting that Eastern Virginia Medical School is a municipality rather than a State agency; EVMS “could not accurately be described as a state university medical school”; control was exerted by localities, who appointed most of the Board of Visitors), *aff'd*, Record No. 120743, 13 Va. S. Ct. UNP 120743 (Va. Apr. 5, 2013) (unpublished).

⁶² 217 Va. 30, 225 S.E.2d 364 (1976).

⁶³ *Id.* at 33.

⁶⁴ *Id.* at 32.

⁶⁵ 227 Va. at 194.

⁶⁶ Record No. 120743, 13 Va. S. Ct. UNP 120743 (Va. Apr. 5, 2013) (unpublished), available at <http://valawyersweekly.com/wp-files/pdf/013-6-030.pdf>.

⁶⁷ *Id.*, slip op. at 7-8.

⁶⁸ *Id.*, slip op. at 8. The Supreme Court also found that, while not an agency, EVMS is a municipal corporation. See *id.*, slip op. at 9.

⁶⁹ But see 2004 Op. Va. Att'y Gen. 130, 132, 2004 Va. AG 130, 132 (“[T]he Authority does not *directly* receive any appropriations from the Commonwealth.”) (emphasis added).

⁷⁰ 2017 Budget Bill — HB 1500 (Reenrolled), Item 306.B.1, VIRGINIA'S LEGISLATIVE INFORMATION SYSTEM, available at <https://budget.lis.virginia.gov/item/2017/1/HB1500/Reenrolled/1/306/> (last visited Dec. 6, 2017). VCUHSA appears to use both “VCU Health System” as well as “VCU Health” to refer to itself more commonly. See *Our Leadership*, VCU HEALTH, available at <https://www.vcuhealth.org/our-story/leadership/our-leadership> (last visited Dec. 6, 2017).

⁷¹ JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION: REVIEW OF THE IMPACT OF MEDICAID RATES ON ACCESS TO HEALTH CARE IN VIRGINIA (Senate Doc. No. 8) at 46-47 (Nov. 2013), available at <http://jlarc.virginia.gov/pdfs/reports/Rpt448.pdf> (last visited Dec. 5, 2017).

⁷² 2017 Budget Bill — HB 1500 (Reenrolled), Item 210, VIRGINIA'S LEGISLATIVE INFORMATION SYSTEM, available at <https://budget.lis.virginia.gov/item/2017/1/HB1500/Chapter/1/210/> (last visited Dec. 6, 2017).

⁷³ 2013 Budget Bill — HB 1500, Item 209, VIRGINIA'S LEGISLATIVE INFORMATION SYSTEM, available at <https://budget.lis.virginia.gov/item/2013/1/HB1500/Chapter/1/209/> (last visited Dec. 6, 2017).

⁷⁴ *Id.*, Item C-39.40, available at <https://budget.lis.virginia.gov/item/2013/1/HB1500/Chapter/2/C-39.40/> (last visited Dec. 6, 2017).

⁷⁵ Section 23.1-2413(A) (Supp. 2017).

⁷⁶ *Id.* See also § 23.1-2413(B) (requiring that projects in excess of \$5 million “shall be . . . presented again” to the General Assembly’s finance committees “[b]efore the Authority materially increases the size or materially changes the scope of any capital project for which construction has commenced”).

⁷⁷ *Cf. Rector & Visitors of the Univ. of Va. v. Carter*, 267 Va. 242, 246, 591 S.E.2d 76 (2004) (“Given the [Virginia Tort Claims] Act’s lack of an express waiver of the common law sovereign immunity afforded the Commonwealth’s agencies, UVA retains its sovereign immunity from the claim brought by Carter.”).

⁷⁸ See Virginia Code Title 23.1, Subtitle IV. VCUHSA also retains the power, like public universities, to seek financing from the Virginia College Building Authority. See § 23.1-2404(A)(10) (VCUHSA has power to “[s]eek financing from, incur or assume indebtedness to, and enter into contractual commitments with the Virginia Public Building Authority and the Virginia College Building Authority, which authorities may borrow money and make and issue negotiable notes, bonds, and other evidences of indebtedness to provide such financing relating to the hospital facilities or any project.”); § 23.1-1014(A)(2) (Supp. 2017) (“Each covered institution may . . . [s]eek financing from, incur, or assume indebtedness to, and enter into contractual commitments with, the Virginia Public Building Authority and the Virginia College Building Authority, which authorities may borrow money and make and issue negotiable notes, bonds, notes, or other obligations to provide such financing relating to facilities or any project.”).

⁷⁹ See 2017 Budget Bill — HB 1500 (Chapter 836), Item 210, VIRGINIA’S LEGISLATIVE INFORMATION SYSTEM, available at <https://budget.lis.virginia.gov/item/2017/1/HB1500/Chapter/1/210/> (last visited Dec. 6, 2017) (appropriating more than \$26 million per year to VCU for “200 instructional and administrative faculty positions and for administrative and classified positions which provide services, through internal service agreements, to [VCUHSA]”).

⁸⁰ See § 23.1-2428 (2016) (providing that, if VCUHSA is dissolved, “all assets of the Authority, after satisfaction of creditors, shall revert to the University”); § 23.1-2418(A) (providing that the “Authority may issue bonds for any of its purposes, including . . . to refund bonds or other obligations issued by or on behalf of the Authority, the University, or otherwise The Authority may guarantee, assume, or otherwise agree to pay, in whole or in part, indebtedness issued by the University . . . resulting in the acquisition or construction of facilities for the benefit of the Authority or the refinancing of such indebtedness.”).

⁸¹ UVA Medical Center’s Operating Board has a composition somewhat similar to VCUHSA’s. Its voting members consist of the Rector and five other members of UVA board of visitors (including the chair), all of whom have been appointed by the governor; its non-voting members include eight specific University officials, and up to six “public” members. See *Health System Board*, UVA BOARD OF VISITORS, available at <http://www.virginia.edu/bov/mcob.html> (last visited Dec. 6, 2017).

⁸² 267 Va. 242, 591 S.E.2d 76 (2004).

⁸³ *Id.* at 246 (noting that even though “‘agencies’ are nothing more than administrative divisions of the Commonwealth . . . [t]he VTCA waives the sovereign immunity of the Commonwealth only. If the General Assembly desired in the Act to waive the sovereign immunity of the Commonwealth’s agencies in addition to the immunity of the Commonwealth, it could have easily done so. It did not.”).

⁸⁴ See § 23.1-2401(B)(3)-(5) (VCUHSA shall support activities of VCU’s Health Sciences School, provide a site for faculty research, and “[s]erve as the principal teaching and training hospital for undergraduate and graduate students.”); *Pike v. Hagaman*, 292 Va. 209, 218, 787 S.E.2d 89 (2016) (referring to VCUHSA as a “state hospital”). See also 2017 Budget Bill — HB 1500 (Reenrolled), Item 196.B.3, VIRGINIA’S LEGISLATIVE INFORMATION SYSTEM, available at <https://budget.lis.virginia.gov/item/2017/1/HB1500/Chapter/1/196> (last visited Dec. 6, 2017) (ordering UVA and VCUHSA to “establish elective Family Practice Medicine experiences in Southwest Virginia for both students and residents”).

⁸⁵ 2006 Op. Va. Att’y Gen. 95, 97, 2006 Va. AG 95, 97 (citing 1986-1987 Op. Va. Att’y Gen. 139, 140, 86-87 Va. AG 139, 140).

⁸⁶ *Gray*, 276 Va. at 102 (internal quotation marks omitted) (quoting *Alliance to Save the Mattaponi v. Commonwealth Dept. of Env'tl. Quality ex rel. State Water Control Bd.*, 270 Va. 423, 455, 621 S.E.2d 78 (2005)). See also 2006 Op. Va. Att'y Gen. at 97 (citing *Eriksen v. Anderson*, 195 Va. 655, 657, 79 S.E.2d 597 (1954); 1980-1981 Op. Va. Att'y Gen. 317, 318, 80-81 Va. AG 317, 318).

⁸⁷ See generally VA. CODE. ANN. §§ 8.01-195.1 to 8.01-195.9 (2015 & Supp. 2017).

⁸⁸ Section 23.1-2404(A)(1).

⁸⁹ *Elizabeth River Tunnel Dist. v. Beecher*, 202 Va. 452, 457, 117 S.E.2d 685 (1961). See also 2006 Op. Va. Att'y Gen. 95, 97, 2006 Va. AG 95, 97 (footnote omitted) (“[T]he Virginia Supreme Court and the Attorney General consistently have interpreted the power to ‘sue and be sued’ or to ‘contract and be contracted with’ insufficient to constitute a waiver of immunity or consent to suit.”).

⁹⁰ Section 23.1-2404(A)(12). A handful of other statutes contain similar language. See VA. CODE ANN. § 33.2-2608(A)(3) (2014) (Hampton Roads Transportation Accountability Commission); § 23.1-1008(3) (2016) (institutions of higher education covered by the Restructured Higher Education Financial and Administration Operations Act); § 15.2-5340.2 (2012) (hospital authorities); § 62.1-132.1(A)(4) (Supp. 2017) (Virginia Port Authority); § 15.2-5205(19) (2012) (hospital or health center commission); § 15.2-5374(19) (Supp. 2017) (Southwest Virginia Health Authority). I do not suggest that the General Assembly intended any particular level of immunity by this language — only that, combined with the other factors discussed, this language makes an express waiver of sovereign immunity more critical.

⁹¹ See *Lisa Stanley v. Virginia Commonwealth Univ. Health Sys. Auth. a/k/a Virginia Commonwealth Univ. Health Sys.*, No. CL16-3016 (Va. Cir. Ct. (City of Richmond) Oct. 11, 2016). It nonetheless found that it is entitled to sovereign immunity “because it is a municipal or quasi-municipal corporation that perform[s] a governmental function.” *Id.*, slip op. at 4.

⁹² *Id.*, slip op. at 2.

⁹³ *Id.* (quoting former version of statute).

⁹⁴ *Id.*, slip op. at 3.

⁹⁵ Section 23.1-2410(C) (2016) (emphasis added).

⁹⁶ 2004 Op. Va. Att'y Gen. 130, 132, 2014 Va. AG 130, 132.

⁹⁷ *Id.* (emphasis added) (footnote omitted).

⁹⁸ See, e.g., 1985-1986 Op. Va. Att'y Gen. 150, 151, 152 n.2, 85-86 Va. AG 150, 151, 152 n.2; 1981-1982 Op. Va. Att'y Gen. 337, 338, 339 n.2, 81-82 Va. AG 337, 338, 339 n.2.

⁹⁹ *Jean Moreau & Assocs.*, 283 Va. at 137.

¹⁰⁰ *Hampton Rds. Sanitation Dist. Comm'n v. Smith*, 193 Va. 371, 374-75 (1952). See also *Baird*, slip op. at 8 (“Political subdivisions, commissions, authorities and other entities established by the General Assembly have been labeled . . . as ‘quasi-municipal corporations’”).

¹⁰¹ *Jean Moreau & Assocs.*, 283 Va. at 137 (quoting *Carter v. Chesterfield Cty. Health Comm'n*, 259 Va. 588, 590 (2000)).

¹⁰² *City of Richmond v. Richmond Metro. Auth.*, 210 Va. 645, 647 (1970).

¹⁰³ See, e.g., *Baird*, slip op. at 8-9 (Eastern Virginia Medical School is a municipal corporation entitled to sovereign immunity); 2012 Op. Va. Att'y Gen. 96, 98, 2012 Va. AG 96, 98 (Warm Springs Sanitation Commission a municipal corporation entitled to sovereign immunity). See also *Hampton Rds. Sanitation Dist. Comm'n*, 193 Va. at 377 (“While it is true that the more attributes of a municipal corporation an agency has the more likely it is to be treated as a municipal

corporation, the final decision rests on the specific issue of each case.”).

¹⁰⁴ Cf. *County of York v. Peninsula Airport Comm’n*, 235 Va. 477, 481 n.1 (1988) (“It is true that when participating localities retain substantial local control over an entity they have created, local activation negates its status as a state agency or an ‘arm’ of the Commonwealth. However, such an entity, although not an arm of the Commonwealth, still may be a municipal corporation (and, thus, a political subdivision) if it possesses enough of the essential attributes.”) (internal citations and certain punctuation marks omitted).

¹⁰⁵ Section 23.1-2401(A).

¹⁰⁶ Section 23.1-2401(B). See also § 23.1-2404(A)(25) (authorizing VCUHSA to exercise its powers “in furtherance of its corporate and public purposes”).

¹⁰⁷ Section 23.1-2404(A)(2) (power to “[h]ave and alter an official seal”); § 23.1-2404(A)(1) (power to “[s]ue and be sued in its own name”); § 23.1-2404(A)(5) (power to “[m]ake and execute contracts”); § 23.1-2408(A) (Supp. 2017) (providing that “[a]ll moneys of the Authority derived from any source shall be paid to the treasurer of the Authority”); § 23.1-2404(A)(14)(a), (b) (power to own and sell land).

¹⁰⁸ Section 23.1-2404(A)(16).

¹⁰⁹ Section 23.1-2404(A)(9); § 23.1-2418 (setting forth in greater detail the Authority’s power to issue bonds); § 23.1-2411(B) (2016) (providing that “[a]ny bonds issued by the Authority . . . are exempt from taxation”).

¹¹⁰ Section 23.1-2402.

¹¹¹ See *Stanley*, slip op. at 4 (finding that “VCUHSA is entitled to sovereign immunity because it is a municipal or quasi-municipal corporation that performed a governmental function”).

¹¹² See 2012 Op. Va. Att’y Gen. 96, 98, 2012 Va. AG 96, 98. See also 2006 Op. Va. Att’y Gen. 95, 97, 2006 Va. AG 95, 97.

¹¹³ Section 23.1-2401(B).

¹¹⁴ Section 23.1-2404(B).

¹¹⁵ Section 23.1-2401(C).

¹¹⁶ 292 Va. 209, 215 (2016).

¹¹⁷ 221 Va. 43, 53 (1980) (establishing a four-factor test to determine whether a State employee is entitled to immunity, based on the employee’s function; the extent of the State’s interest and involvement in that function; whether the employee’s act involved the use of judgment and discretion; and the degree of control and direction exercised by the State over the employee).

¹¹⁸ 292 Va. at 212, 219.

¹¹⁹ *Pike v. Hagaman*, 13 Cir. CL131815, 90 Va. Cir. 138, 139 (City of Richmond 2015), *aff’d*, 292 Va. 209 (2016).

¹²⁰ *Pike*, 292 Va. at 217 (punctuation and citations omitted).

¹²¹ *Id.* at 218.

¹²² Section 8.01-195.3 (2015).

¹²³ Section 8.01-195.2 (2015).

¹²⁴ See *Carter*, 267 Va. at 244-45 (citations omitted).

Code of Virginia

Title 23.1. Institutions of Higher Education; Other Educational and Cultural Institutions

Subtitle I. General Provisions

Chapter 3. The Virginia Higher Education Opportunity Act of 2011

§ 23.1-303. Calculation of state general fund share of an institution's basic operations and instruction funding need; cost of education

A. Following consultation with each public institution of higher education and the Higher Education Advisory Committee described in § 23.1-309, the Council shall calculate the basic operations and instruction funding need of each public institution of higher education as provided in subsection B for each year of the next biennium and make such calculation available to the Governor, the General Assembly, and all public institutions of higher education. The Governor shall take into account each institution's basic operations and instruction funding need and the Commonwealth's funding split policy established in the general appropriation act by which 67 percent of an institution's cost of education for Virginia students is funded from the state general fund and 33 percent from funds other than the state general fund during the preparation of his proposed biennial budget bill for the next biennium, and the General Assembly shall take such items into account in enacting the general appropriation act for the next biennium. Between such biennial recalculations, the General Assembly may increase or decrease the appropriation of basic operations and instruction funding to a public institution of higher education to correspond with an increase or decrease in Virginia undergraduate student enrollment at the institution as provided in § 23.1-304, or the institution's meeting or not meeting targeted financial incentives listed in § 23.1-305, or for any other purpose deemed appropriate by the General Assembly.

B. The basic operations and instruction funding need of each public institution of higher education for each fiscal year of the biennium shall consist of the sum of (i) the institution's cost of education for the total enrollment in actual attendance during the fiscal year that ended on June 30 of each odd-numbered year, which shall be determined using a cost-based funding policy that consists of (a) a set of formulas for calculating (1) educational cost based on faculty-student ratios by discipline and level and (2) the educational and general programs of instruction, academic support, student services, institutional support, and operation and maintenance of physical plant and (b) adjustments based on particular state policies or specific institutional missions or conditions; (ii) the amount required to reach the Commonwealth's faculty salary goal of the 60th percentile of the most recently reported average faculty salaries paid by that institution's peer institutions as established in the general appropriation act; and (iii) such other funding for educational and general services as the General Assembly may appropriate.

C. State general funds shall be allocated and appropriated to public institutions of higher education in a fair and equitable manner such that, to the extent practicable, the percentage of the cost of education for Virginia students enrolled at an institution to be funded from state general funds is the same for each institution. To the extent that the percentages differ among institutions, that fact shall be taken into account as the Governor deems appropriate in his proposed biennial budget bill and by the General Assembly as it deems appropriate in the general appropriation act.

2011, cc. 828, 869, § 23-38.87:13; 2016, c. 588.

§ 23.1-305. Public institutions of higher education; targeted economic and innovation incentives

A. The Governor shall consider and may recommend and the General Assembly shall consider and may fund targeted economic and innovation incentives to achieve the objective and purposes of this chapter. Such incentives may include incentives based on the economic opportunity metrics developed pursuant to subdivision B 4 of § 23.1-309 and incentives for:

1. Increased enrollment of Virginia students, in addition to the per student funding provided by § 23.1-304;
2. Increased degree completion for Virginia residents who have partial credit completion for a degree;
3. Increased degree completion in a timely or expedited manner;
4. Improved retention and graduation rates;
5. Increased degree production in STEM or other high-need areas such as the health care-related professions;
6. Increased research, including regional and public-private collaboration;
7. Optimal year-round utilization of resources and other efficiency reforms designed to reduce total institutional cost;
8. Technology-enhanced instruction, including course redesign, online instruction, and resource sharing among institutions; and
9. Enhanced comprehensive community college transfer programs and grants and other enhanced degree path programs.

B. The Governor and the General Assembly shall consider maintenance of effort initiatives for individual institutions with unique missions and demonstrable performance in specific incentive areas identified pursuant to subsection A.

C. The criteria for measuring whether the incentive areas in subsection A have been met, and the benefits or consequences for meeting or not meeting such incentive areas, shall be developed and reviewed as provided in subdivisions B 3 and 4 of § 23.1-309.

2011, cc. 828, 869, § 23-38.87:16; 2016, c. 588.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 23.1-306. Public institutions of higher education; six-year plans; institutional partnership performance agreements

A. The governing board of each public institution of higher education shall (i) develop and adopt biennially in odd-numbered years and amend or affirm biennially in even-numbered years a six-year plan for the institution; (ii) submit a preliminary version of such plan to the Council, the General Assembly, the Governor, and the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Education and Health, and the Senate Committee on Finance and Appropriations no later than July 1 of each odd-numbered year; and (iii) submit preliminary amendments to or a preliminary affirmation of each such plan to the Council, the General Assembly, the Governor, and the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Education and Health, and the Senate Committee on Finance and Appropriations no later than July 1 of each even-numbered year. Each such preliminary plan and preliminary amendment to or preliminary affirmation of such plan shall include a report of the institution's active contributions to efforts to stimulate the economic development of the Commonwealth, the area in which the institution is located, and, for those institutions subject to a management agreement set forth in Article 4 (§ [23.1-1004](#) et seq.) of Chapter 10, the areas that lag behind the Commonwealth in terms of income, employment, and other factors. Each such preliminary plan and preliminary amendment to or preliminary affirmation of such plan shall be submitted as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. No such preliminary plan, amendments, or affirmation shall be posted on the General Assembly's website.

B. The Secretary of Finance, the Secretary of Education, the Director of the Department of Planning and Budget, the Director of the Council, the Staff Director of the House Committee on Appropriations, and the Staff Director of the Senate Committee on Finance and Appropriations, or their designees, shall review each institution's preliminary plan, amendments, or affirmation and provide comments to the institution on such plan, amendments, or affirmation by September 1 of the relevant year. Each institution shall respond to any such comments by October 1 of that year and submit a finalized version of such plan, amendments, or affirmation to the Council, the General Assembly, the Governor, and the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Education and Health, and the Senate Committee on Finance and Appropriations no later than December 1 of that year. Each such finalized version shall be submitted as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

C. Each plan shall be structured in accordance with, and be consistent with, the objective and purposes of this chapter set forth in § [23.1-301](#) and the criteria developed pursuant to § [23.1-309](#) and shall be in a form and manner prescribed by the Council, in consultation with the Secretary of Finance, the Secretary of Education, the Director of the Department of Planning and Budget, the Director of the Council, the Staff Director of the House Committee on Appropriations, and

the Staff Director of the Senate Committee on Finance and Appropriations, or their designees.

D. Each six-year plan shall (i) address the institution's academic, financial, and enrollment plans, including the number of Virginia and non-Virginia students, for the six-year period; (ii) indicate the planned use of any projected increase in general fund, tuition, or other nongeneral fund revenues; (iii) be based upon any assumptions provided by the Council, following consultation with the Department of Planning and Budget and the staffs of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations, for funding relating to state general fund support pursuant to §§ 23.1-303, 23.1-304, and 23.1-305 and subdivision 9; (iv) be aligned with the institution's six-year enrollment projections; and (v) include:

1. Financial planning reflecting the institution's anticipated level of general fund, tuition, and other nongeneral fund support for each year of the next biennium;
2. The institution's anticipated annual tuition and educational and general fee charges required by (i) degree level and (ii) domiciliary status, as provided in § 23.1-307;
3. Plans for providing financial aid to help mitigate the impact of tuition and fee increases on low-income and middle-income students and their families as described in subdivision 9, including the projected mix of grants and loans;
4. Degree conferral targets for undergraduate Virginia students;
5. Plans for optimal year-round use of the institution's facilities and instructional resources;
6. Plans for the development of an instructional resource-sharing program with other public institutions of higher education and private institutions of higher education;
7. Plans with regard to any other incentives set forth in § 23.1-305 or any other matters the institution deems appropriate;
8. The identification of (i) new programs or initiatives including quality improvements and (ii) institution-specific funding based on particular state policies or institution-specific programs, or both, as provided in subsection C of § 23.1-307; and
9. An institutional student financial aid commitment that, in conjunction with general funds appropriated for that purpose, provides assistance to students from both low-income and middle-income families and takes into account the information and recommendations resulting from the review of federal and state financial aid programs and institutional practices conducted pursuant to subdivisions B 2 and C 1 of § 23.1-309.

E. In developing such plans, each public institution of higher education shall consider potential future impacts of tuition increases on the Virginia College Savings Plan and ABLE Savings Trust Accounts (§ 23.1-700 et seq.) and shall discuss such potential impacts with the Virginia College Savings Plan. The chief executive officer of the Virginia College Savings Plan shall provide to each institution the Plan's assumptions underlying the contract pricing of the program.

F. 1. In conjunction with the plans included in the six-year plan as set forth in subsection D, each public institution of higher education, Richard Bland College, and the Virginia Community College System may submit one innovative proposal with clearly defined performance measures, including any request for necessary authority or support from the Commonwealth, for a performance pilot. If the General Assembly approves the proposed performance pilot, it shall

include approval language in the general appropriation act. A performance pilot shall advance the objectives of this chapter by addressing innovative requests related to college access, affordability, cost predictability, enrollment management subject to specified commitments regarding undergraduate in-state student enrollment, alternative tuition and fee structures and affordable pathways to degree attainment, internships and work study, employment pathways for undergraduate Virginia students, strategic talent development, state or regional economic development, pathways to increase timely degree completion, or other priorities set out in the general appropriation act.

2. A performance pilot may include or constitute an institutional partnership performance agreement, which shall be set forth in a memorandum of understanding that includes mutually dependent commitments by the institution, the Commonwealth, and identified partners, if any, related to one or more of the priorities set forth in subdivision 1 or set forth in a general appropriation act. No such institutional partnership performance agreement shall create a legally enforceable obligation of the Commonwealth.

3. No more than six performance pilots shall be approved in a single session of the General Assembly.

4. Development and approval of any performance pilot proposal shall proceed in tandem with consideration of the institution's six-year plan, as follows:

a. An institution that intends to propose a performance pilot shall communicate that intention as early as practicable, but not later than April 1 of the year in which the performance pilot will be proposed, to the reviewers listed in subsection B, the co-chairmen of the Joint Subcommittee on the Future Competitiveness of Virginia Higher Education, and the Governor. In developing a proposed performance pilot, the institution shall consider the Commonwealth's educational and economic policies and priorities, including those reflected in the Virginia Plan for Higher Education issued by the Council, the economic development policy developed pursuant to § 2.2-205, the strategic plan developed pursuant to § 2.2-2237.1, relevant regional economic growth and diversification plans prepared by regional councils pursuant to the Virginia Growth and Opportunity Act (§ 2.2-2484 et seq.), and any additional guidance provided by the Joint Subcommittee on the Future Competitiveness of Virginia Higher Education and the Governor.

b. An institution that submits a performance pilot shall include the one innovative proposal with clearly defined performance measures, and any corresponding authority and support requested from the Commonwealth, with its submission of the preliminary version of its six-year plan pursuant to clause (ii) of subsection A or with its preliminary amendment or affirmation submission pursuant to clause (iii) of subsection A.

c. The reviewers listed in subsection B, or their designees, shall review and comment on any proposed performance pilot in accordance with the six-year plan review and comment process established in subsection B and may expedite such review and comment process to facilitate the executive and legislative budget process or for other reasons. No later than October 15 of the relevant year, the reviewers shall communicate to the Governor and the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations their recommendations regarding each performance pilot proposal. Such recommendations shall include the reviewers' comments regarding how the proposed performance pilots, individually and collectively, support the strategic educational and economic policies of the Commonwealth.

d. Each performance pilot proposal shall include evidence of its approval by the institution's governing board and, if accepted, shall be referenced in the general appropriation act.

2011, cc. [828](#), [869](#), §§ 23-38.87:15, 23-38.87:17; 2016, cc. [149](#), [588](#); 2018, c. [487](#); 2019, cc. [794](#), [795](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 23.1-307. Public institutions of higher education; tuition and fees

A. The governing board of each public institution of higher education shall continue to fix, revise, charge, and collect tuition, fees, rates, rentals, and other charges for the services, goods, or facilities furnished by or on behalf of such institution and may adopt policies regarding any such service rendered or the use, occupancy, or operation of any such facility.

B. Except to the extent included in the institution's six-year plan as provided in subsection C, if the total of an institution's tuition and educational and general fees for any fiscal year for Virginia students exceeds the difference for such fiscal year between (i) the institution's cost of education for all students, as calculated pursuant to clause (i) of subsection B of § 23.1-303 and (ii) the sum of the tuition and educational and general fees for non-Virginia students, the state general funds appropriated for its basic operations and instruction pursuant to subsection A of § 23.1-303, and its per student funding provided pursuant to § 23.1-304, the institution shall forgo new state funding at a level above the general funds received by the institution during the 2011-2012 fiscal year, at the discretion of the General Assembly, and shall be obligated to provide increased financial aid to maintain affordability for students from low-income and middle-income families. This limitation shall not apply to any portion of tuition and educational and general fees for Virginia students allocated to student financial aid, an institution's share of state-mandated salary or fringe benefit increases, increases in funds other than state general funds for the improvement of faculty salary competitiveness above the level included in the calculation in clause (i) of subsection B of § 23.1-303, the institution's progress towards achieving any financial incentive pursuant to § 23.1-305, unavoidable cost increases such as operation and maintenance for new facilities and utility rate increases, or other items directly attributable to an institution's unique mission and contributions.

C. Nothing in subsection B shall prohibit an institution from including in its six-year plan required by § 23.1-306 (i) new programs or initiatives including quality improvements or (ii) institution-specific funding based on particular state policies or institution-specific programs, or both, that will cause the total of the institution's tuition and educational and general fees for any fiscal year for Virginia students to exceed the difference for such fiscal year between (a) the institution's cost of education for all students, as calculated pursuant to clause (i) of subsection B of § 23.1-303, and (b) the sum of the tuition and educational and general fees for the institution's non-Virginia students, the state general funds appropriated for its basic operations and instruction pursuant to subsection A of § 23.1-303, and its per student funding provided pursuant to § 23.1-304.

D. No governing board of any public institution of higher education shall approve an increase in undergraduate tuition or mandatory fees without providing students and the public a projected range of the planned increase, an explanation of the need for the increase, and notice of (i) the date, time, and location of the meeting at which public comment is permitted pursuant to subsection E on the institution's website and through any other standard means of communication utilized by the institution with students at least 10 days prior to such meeting

and (ii) the date and location of any vote on such increase at least 30 days prior to such vote.

E. Prior to any vote referenced in subsection D, the governing board of each public institution of higher education shall permit public comment on the proposed increase at a meeting, as that term is defined in § [2.2-3701](#), of the governing board. Each such governing board shall establish policies for such public comment, which may include reasonable time limitations.

F. At any meeting at which the governing board of a public institution of higher education approves an increase in undergraduate tuition and mandatory fees, the governing board shall provide an explanation of any deviation from the projected range provided pursuant to subsection D.

G. No later than August 1 of each year, the Council shall provide to the Governor and the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Education and Health, and the Senate Committee on Finance and Appropriations a report on any increase in undergraduate tuition and mandatory fees at a public institution of higher education, the public comment relating to such increase in undergraduate tuition and mandatory fees, and any deviation in the increase in undergraduate tuition and mandatory fees from the increase projected in the institutional six-year plan provided pursuant to § [23.1-306](#).

2011, cc. [828](#), [869](#), § 23-38.87:18; 2016, c. [588](#); 2017, c. [523](#); 2019, cc. [583](#), [584](#), [588](#); 2020, c. [435](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.



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